

Supplemental Schedule

THE ATLANTA RAILROAD COMPANY, THE
ATLANTA AND NORTH SE RAILWAY
AND THE ATLANTA AND OHIO RAIL-
ROADS, ALL OF ATLANTA.

THE ATLANTA RAILROAD COMPANY, INTERSTATE
AND INTRASTATE, D. A. CHICKELL &

APPROVED FOR THE RECORDS OF THE UNITED STATES FOR
THE RECORD OF ATLANTA

FILED JUN 11 1946

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 182

THE PENNSYLVANIA RAILROAD COMPANY, THE
ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY, THE BALTIMORE AND OHIO RAIL-
ROAD COMPANY, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE
COMMERCE COMMISSION, D. A. STICKELL &
SONS, INC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MARYLAND

VOL. I

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[fol. 1]

[Caption omitted]

[fol. 2]

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MARYLAND**

No. 2091 Civil Docket

THE PENNSYLVANIA RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, The Baltimore and Ohio Railroad Company, Charles M. Thomson, as Trustee of the Property of the Chicago and North Western Railway Company, a Corporation; Chicago, Milwaukee, St. Paul and Pacific Railroad Company, (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees), Joseph B. Fleming and Aaron Colnon, Trustees of The Chicago, Rock Island and Pacific Railway Company, Louisville and Nashville Railroad Company, G. W. Webster and Joseph Chapman, Trustees, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Guy A. Thompson, Trustee Missouri Pacific Railroad Company, Debtor, The New York Central Railroad Company, The Pittsburgh and Lake Erie Railroad Company, Southern Railway Company, Wabash Railroad Company

vs.

UNITED STATES OF AMERICA

DOCKET ENTRIES

1943

- Nov. 4. Petition under the provisions of the Interstate Commerce Act, filed.
- Nov. 4. Summons issued ret'ble 60 days after service. (Summons U. S. Attorney personally—also Attorney General of U. S. and Interstate Commerce Commission by registered mail.—5 November 1943).
- Dec. 17. Intervention of Interstate Commerce Commission, fd.
- Dec. 17. Answer of Interstate Commerce Commission, fd. (Service admitted).

1943

- Dec. 31. Motion of D. A. Stickell and Sons, Inc. to intervene herein and Order of Court thereon granting leave and that to plead or answer on or before January 15, 1944, filed.
- Dec. 31. Answer of The United States of America and Certificate of Service, filed.
- Dec. 27. Order of Court requiring respondent to show cause on 26th January 1944 at 10 A. M. why the application for an interlocutory injunction should not issue and directing copies of order and petition be served as therein provided filed. (3 copies of each sent to be served.)
[fol. 3] (Served Bernard J. Flynn, U. S. Attorney, personally also Interstate Commerce Commission and The Attorney General of U. S. by registered mail—7th January 1944).
- Dec. 27. Order of Court convening Three Judge Statutory Court filed.

1944

- Jany. 7. Answer of Intervener, D. A. Stickell & Sons, Inc., filed.
- Jany. 31. Reply Brief for United States, filed.
- Mar. 2. Opinion of Court, filed.
- Mar. 22. Application of Petitioners for stay pending Appeal, filed.
- Mar. 22. Order of Court that the Order of the Interstate Commerce Commission, as amended, and the operation and enforcement thereof, be stayed and suspended pending the perfection of Petitioner's Appeal and fixing security for damages and costs on Appeal in the sum of \$5,000.00 filed.
- Mar. 22. Bond staying Order of Interstate Commerce Commission pending Appeal, filed.
- Mar. 22. Final Decree dismissing the Complaint for want of equity at petitioners costs, filed.
- May 15. Petition of Pennsylvania Railroad Company, et al for Appeal, filed.
- May 15. Assignment of Errors, filed.
- May 15. Jurisdictional Statement under Rule 12, of Revised Rules of Supreme Court, filed.
- May 15. Order of Court allowing appeal, filed.

1944

- May 15. Citation issued. (Service admitted--15 May 1944.)
- May 15. Approved Appeal Bond filed.
- May 15. Notice of Appeal, filed. (Service admitted by Atty. Gen.—State of Md.)
- May 15. Notice of Appeal to the United States of America, Interstate Commerce Commission and D. A. Stickell & Sons, Inc., filed. (Service admitted).
- May 15. Statement by Petitioners—Appellants directing attention to Paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court, filed. (Service admitted.)

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- May 15. Petitioners-Appellants Praecipe for Transcript of Record, filed. (Service admitted)
- May 15. Order of Court, directing the documents and papers covered by the three certificates of the Secretary of Interstate Commerce Commission which were received in evidence in the trial, be forwarded, in lieu of copies to the Clerk of the Supreme Court as a part of the Transcript of Record, filed. (Service admitted.)
- May 19. Admission of Service of Petition for Appeal &c. by D. A. Stickell & Sons, Inc., filed.

[fol. 7] IN UNITED STATES DISTRICT COURT

[Title omitted]

[fol. 8] PETITION—Filed November 4, 1943

To the Honorable the Judges of the District Court of the United States for the District of Maryland:

Come now The Pennsylvania Railroad Company and the other petitioners and allege as follows:

I

The petitioners herein are the following:

The Pennsylvania Railroad Company, herein termed the Pennsylvania, which is a corporation organized and

existing under the laws of the Commonwealth of Pennsylvania and a citizen of said Commonwealth, with its principal office at Philadelphia, Pennsylvania.

The Atchison, Topeka and Santa Fe Railway Company, a corporation of the State of Kansas.

The Baltimore and Ohio Railroad Company, herein termed the Baltimore & Ohio, a corporation of the States of Maryland and Virginia.

Charles M. Thomson, Trustee of the property of The Chicago and North Western Railway Company, a corporation of the State of Illinois and other States.

Henry A. Scandrett, Walter J. Cummings, and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a corporation of the State of Wisconsin.

Louisville and Nashville Railroad Company, a corporation of the State of Kentucky.

G. W. Webster and Joseph Chapman, Trustees of Minneapolis, St. Paul & Sault Ste. Marie Railway Company, [fol. 9] a corporation of the States of Minnesota, Wisconsin, and Michigan.

Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, a corporation of the State of Missouri.

The New York Central Railroad Company, a corporation of the State of New York and other states.

The Pittsburgh and Lake Erie Company, a corporation of the Commonwealth of Pennsylvania.

Southern Railway Company, a corporation of the State of Virginia.

Wabash Railroad Company, a corporation of the State of Ohio, successor in interest to Wabash Railway Company (Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers).

II

Petitioners are common carriers of property by railroad subject to the Interstate Commerce Act, hereinafter referred to as the Act. They bring this their petition in behalf of themselves and in behalf of such other persons or corporations as have an interest herein and may by proper proceedings become parties hereto.

III

This is a suit brought under the provisions of Acts of Congress approved June 18, 1910 (36 Stat. 539), March 3, 1911 (36 Stat. 1148), and October 22, 1913 (38 Stat. 219), Title 28 U. S. Code, Sections 41 (28) and 43 to 48, inclusive, and under the provisions of the Act of Congress approved September 18, 1940 (54 Stat. 916) Title 49 U. S. Code, Sec-[fol. 10] tion 17 (9) to enjoin, set aside, annul, and suspend the order of the Interstate Commerce Commission, entered in its Docket No. 28647, *D. A. Stickell & Sons, Inc. v. The Alton Railroad Company et al.*, on March 18, 1943, 255 I. C. C. 333. The jurisdiction of this Court depends upon the aforesaid statutes and its general equity jurisdiction, and the United States of America is made defendant herein by authority of the said statutes. The amount of the controversy herein exceeds as to each petitioner the sum of Three Thousand Dollars (\$3,000) exclusive of interest and costs.

IV

The venue of this suit is laid in the District of Maryland pursuant to Title 28 U. S. Code, Section 43. The order of the Interstate Commerce Commission, herein termed the Commission, which is herein sought to be enjoined, set aside, annulled, and suspended, was made in a proceeding instituted upon the petition of D. A. Stickell & Sons, Inc., herein termed complainant, a corporation of the State of Maryland, engaged in the milling and mixing of grain, grain products, and grain by-products, and in the manufacture of mixed livestock and poultry feeds at Hagerstown, Maryland. A copy of the petition or complaint in the said proceeding before the Commission is annexed hereto as Exhibit "A" and made a part hereof.

V

The said complaint was filed with the Commission on April 9, 1941. The Commission thereupon served said complaint on the railroads named therein as defendants, including petitioners herein or their predecessors in interest, and after joinder of issue by the filing of answers [fol. 11] or, pursuant to the provisions of Rule IV (b) of the Rules of Practice of the Commission, by failure to file an answer, the Commission entered upon an investigation

of the matters complained of, hearings were had before an Examiner of the Commission, briefs were filed, oral argument was had before the Commission (Division 2), and thereafter, on March 18, 1943, the Commission (Division 2) made and entered its report containing its findings and conclusions, and as of the same date made and entered its corrected order. A copy of said report is attached hereto as Exhibit "B", and a copy of said corrected order of March 18, 1943, herein termed the order of March 18, 1943, is attached as Exhibit "C", and both are made a part hereof.

VI

By its terms the said order of March 18, 1943, was made to become effective June 28, 1943, upon 30 days' notice, and thereby required the railroads named as defendants therein, according as they participated in the transportation, to establish the prescribed joint rates over the prescribed through routes by appropriate tariffs filed with the Commission not less than thirty days prior to the said effective date. Before said order had become effective, and in accordance with the provisions of Section 17(8) of the Act, Title 49 U. S. Code, Sec. 17(8), and the rules and regulations of the Commission, the defendant railroads (other than Western Maryland Railway Company), herein termed defendant railroads, filed their petition for reargument and reconsideration of the said report and order of the Commission (Division 2) of March 18, 1943, and for the stay or postponement of said order, pursuant to the [fol. 12] provisions of Section 17(8) of the Act, pending disposition of the matter by the Commission. Pursuant to said provisions the Commission (Commissioner Aitchison) by orders dated May 24, 1943, and July 20, 1943, modified the said order of March 18, 1943, so as to become effective on August 28, 1943, and October 28, 1943, respectively, on 30 days' notice. By order of October 4, 1943, the Commission denied, without report, the petition filed by defendant railroads for reargument and reconsideration as aforesaid. A copy of the Commission's order of October 4, 1943, denying said petition for reargument and reconsideration, is attached as Exhibit "D". Upon defendants' request therefor, the Commission (Commissioner Aitchison), by order of October 16, 1943, further modified the

said order of March 18, 1943, so as to become effective on December 17, 1943, upon 30 days' notice. As a result of the several said orders the defendants in the proceeding before the Commission, including petitioners herein, are presently required to file with the Commission, not later than November 17, 1943, tariffs establishing the prescribed joint rates over the prescribed through routes to become effective not later than December 17, 1943.

VII

The said complaint before the Commission, as amended at the hearing, invoked the Commission's power under Section 15 of the Act, Title 49 U. S. Code, Sec. 15, to require the establishment of through routes and joint rates on grain, grain products, and grain by-products from points of origin in the States of Ohio, Indiana, Illinois, Wisconsin, Iowa, Minnesota, and Missouri, and from Omaha, Nebraska, to Hagerstown, Md., for mixture at that point [fol. 13] into live stock and poultry food, and for reshipment thence to destinations on the lines of The Pennsylvania Railroad Company, herein termed the Pennsylvania, east of York, Pa., and Fulton Junction (Baltimore) Md., and between New York, N. Y., and Cape Charles, Va., inclusive, and particularly to destinations in the so-called Del-Mar-Va peninsula, herein termed the Peninsula, the latter being that part of Delaware, Maryland, and Virginia south of Wilmington, Del., and between the Chesapeake and Delaware Bays.

VIII

Complainant manufactures livestock and poultry feed at Hagerstown, Md., by milling and mixing grain, grain products, and various by-products obtained principally from grain elevators, grain mills, vegetable oil mills, and food-manufacturing plants in Kansas, Missouri, Minnesota, Idaho, Illinois, Indiana, and Ohio. The bulk of its production moves to New England, eastern Pennsylvania, Delaware, and the Peninsula. About 50 or 60 percent of its production and about 90 percent of that part thereof that is handled by the Pennsylvania moves to points on the Peninsula. The Pennsylvania is the only railroad serving these points.

IX

Joint through rates apply from points of origin in Central territory and from the market points, Chicago, East St. Louis, and Cairo, Ill., and St. Louis, Mo., to all points in trunk-line territory. Central territory is generally that territory west of Buffalo, N. Y., and Pittsburgh, Pa., north of the Ohio River, east of the above-named market points, and south of the Great Lakes. Said joint through [fol. 14] rates are restricted by the carriers to apply over certain routes. For example, they do not apply on traffic originating in Central territory or west thereof destined to points on the Pennsylvania, unless the Pennsylvania receives the traffic at or west of Pittsburgh or Buffalo. Transit arrangements, such as that covering the milling of grain or mixing of feed, are maintained on grain, grain products, and by-products at points directly intermediate over the tariff routes at the through rates, plus a transit charge, and at some points not directly intermediate at the through rates, plus a transit charge and an out-of-line or back-haul charge.

X

The Baltimore & Ohio and the Pennsylvania maintain transit arrangements at Hagerstown restricted, as they are at other points in trunk-line territory on their lines, to traffic originated by them at or west of, or received by them from their connections west of, their trunk-line western termini, such as Buffalo and Pittsburgh. Trunk-line territory is generally that territory east of Central territory and west of New England, New York, N. Y., and Norfolk, Va. The routes of the Baltimore & Ohio and the Pennsylvania through Hagerstown embrace out-of-line hauls of 48 and 149 miles respectively. The Pennsylvania's out-of-line haul is from its Enola Yard, which is across the Susquehanna River from Harrisburg, Pa., to Hagerstown and return. Charges in addition to the joint through rates apply for the out-of-line service. The Pennsylvania's charge is 4.5 cents per 100 pounds for its out-of-line haul or back-haul, which charge, in addition to the transit charge, applies on complainant's shipments to eastern destinations [fol. 15] on the Pennsylvania. Complainant's plant is on the tracks of the Western Maryland Railway, but the Penn-

sylvania absorbs the Western Maryland's switching charge of \$6.93 per car each way.

XI

The complainant before the Commission did not question the reasonableness of the Pennsylvania's out-of-line charge when such service was performed, but the objective of its complaint was to escape such charge through the prescription of through routes via Hagerstown which would not involve out-of-line service.

XII

The evidence before the Commission showed and the Commission in its report of March 18, 1943, found:

"Both parties use Chicago as a representative origin and Salisbury, Md., as a representative destination, and the places will be so used here. The distance over the short tariff route of the Pennsylvania between those points is 902 miles. Its haul from Fulton Junction is 155 miles and from York 174 miles. The distance over route 1 via Fulton Junction is 946 miles and via York 958 miles, and over route 2 via Fulton Junction 938 miles and via York 950 miles. It is evident that the Pennsylvania's direct route is not unreasonably long and that the prescription of either route 1 or 2 would require the Pennsylvania to embrace in such route substantially less than the entire length of its railroad which lies between the termini of such route."

[fol. 16]

XIII

In the report of the Commission (Division 2), herein termed the report of the Commission, the Commission concluded that the routes sought by the complainant were necessary and desirable in the public interest, but in view of the provisions of Section 15(4) of the Act, 49 U. S. Code, Sec. 15(4), stated that "The question of whether the Commission is precluded from prescribing the routes sought depends on whether those routes are needed in order to provide adequate and more efficient or adequate and more economic transportation."

XIV

Concerning the adequacy, efficiency, and economy of the present routes of the Pennsylvania, the record showed and the Commission found:

"The Pennsylvania * * * maintains scheduled fast trains that operate frequently over direct routes, that do not go through Hagerstown, from the rate-break points and origins on its line and from its junctions with other carriers in central territory to the destinations here considered. Its main routes from the west are via Pittsburgh and its Enola yard, which is across the Susquehanna River from Harrisburg. Traffic moving north, south, and east from Harrisburg is classified at that yard. An average of 65 scheduled trains and in addition thereto extra sections of those trains, extra trains, and local trains move into and out of that yard each day. Grain handled by the Pennsylvania moving to and from Hagerstown moves through that yard. Three scheduled trains operate each way daily between Enola yard and Hagerstown, and additional [fol. 17] sections and extra trains are used when needed. There seems to be no question but that the Pennsylvania maintains sufficiently frequent service to meet all reasonable demands and that it can and does furnish adequate facilities to handle any and all grain traffic likely to be given to it at western origins for movement over its direct routes or over its routes via Hagerstown to eastern destinations."

XV

The Commission further found:

"Complainant does not question the adequacy, efficiency, or economy of the Pennsylvania service over its direct routes but only over its route via Hagerstown. As to the latter, it contends the routes sought would be more adequate, efficient, and economic from the shippers' standpoint."

XVI

Uncontroverted testimony of a competent railroad operating officer, testifying in the proceeding before the Com-

mission, established that the movement of a car from Hagerstown via the Western Maryland and through York or Fulton Junction to Salisbury, Md., or Cape Charles, Va., destinations on the Peninsula, would require a longer time than over the route of the Pennsylvania from Hagerstown through Enola Yard, but the Commission failed to find accordingly, merely characterizing the statement as "opinion", and disregarded this evidence upon the erroneous assumption that it was unreliable because the witness, although not asked or given an opportunity to do so, did not explain why the disadvantage in time of the Western Maryland [fol. 18] land routes as compared with that of the Pennsylvania was greater in the case of Cape Charles than in the case of Salisbury.

XVII

The uncontroverted evidence of record showed that to Milford, N. J., designated by complainant as typical of destinations on the Pennsylvania in New Jersey to which it desired new through routes established, and to which the Commission's order of March 18, 1943, prescribes through routes, the movement of a car from Hagerstown via Fulton Junction would be approximately one day slower than over the existing route of the Pennsylvania. The uncontroverted evidence of record also showed that to Chatham, Pa., designated by complainant as typical of destinations in eastern Pennsylvania on the Pennsylvania Railroad to which it desired new through routes established and to which the Commission's order of March 18, 1943, prescribes through routes, a car moving from Hagerstown via Fulton Junction would have to move over the Pennsylvania into Philadelphia and thence to Avondale, Pa., or to Enola Yard via Lancaster, Pa., to Avondale, in either of which instances the movement would be more circuitous and for a greater length of haul than over the existing route of the Pennsylvania from Hagerstown through Enola Yard. The Commission, however, made no findings in accordance with this evidence, but erroneously disregarded it and made its ultimate findings contrary thereto.

XVIII

The uncontroverted evidence before the Commission established that, due to physical limitations and operating

[fol. 19] conditions on the Pennsylvania incident to the interchange between the Western Maryland and the Pennsylvania at York and Fulton Junction, including the movement through the Baltimore tunnels to Bay View Yard (Baltimore) when Fulton Junction is used, neither of these junctions would be satisfactory, from the standpoint of railroad operation, as interchange points on this traffic, and that neither would be as adequate, efficient, or as economic as the interchange between the Western Maryland and the Pennsylvania at Hagerstown, incident to the use of the route of the Pennsylvania from Hagerstown to destination, but except for finding that the interchange tracks at York and Fulton Junction "are now used to near, and sometimes to full, capacity," the Commission failed to find in accordance with the facts of record but contrary thereto found that the evidence did not show "that those conditions are any more difficult than the operating difficulties encountered at Hagerstown."

XIX

The ultimate findings contained in the Commission's report of March 18, 1943, and its order of the same date, are predicated in part upon its finding and holding that the Pennsylvania "has failed to perform its duty" (under Title 49 U. S. C. 1940 ed., Sec. 3(4) "to afford all reasonable, proper, and equal facilities for the interchange of traffic" with the Western Maryland at York and Fulton Junction, although no such issue was raised by the complaint or at the hearing, nor was any notice given the parties that such issue would be tried, nor was such issue tried before the Commission.

[fol. 20]

XX

The defendant railroads before the Commission introduced a cost study showing the comparative costs of transportation over the proposed routes, including routes which the Commission has now prescribed through York and Fulton Junction, and over existing routes of the Pennsylvania, including its direct route and also its route involving out-of-line movement via, and transit at, Hagerstown. The said costs were based on data reported to the Commission by the carriers involved for the year 1940, and were computed, with some modifications, according to a formula

prepared by the Commission's Bureau of Statistics. Typical of the costs so shown were the following:

[fol. 21]

COMPARATIVE FREIGHT SERVICE COSTS

(Based on Assumed Through Carload Movement of 33 Tons in Box-Car Equipment from Chicago, Ill., to Salisbury, Md.—Year 1940)¹

Route	Miles	Total Costs	
		Operating Expenses Only	Operating Expenses, Rents, Taxes, 5.75% Return, and Passenger Deficiency
P. R. R. direct.....	902	\$121.07	\$229.93
N. Y. C.—P. & L. E.—W. M. (York, Pa.) P. R. R. ¹	958	165.81	327.85
Wab.—W. & L. E.—P. & W. Va.—W. M. (Fulton Jct. Md.) P. R. R. ²	938	206.23	358.49

COMPARATIVE FREIGHT SERVICE COSTS

(Based on Assumed Carload Movement of 33 Tons from Chicago, Ill., to Hagerstown, Md., and of 1.34 cars of Outbound Products at 24.6 Tons Per Car to Salisbury, Md.—Box Car Equipment—Year 1940).

Route	Miles	Total Costs	
		Operating Expenses Only	Operating Expenses, Rents, Taxes, 5.75% Return, and Passenger Deficiency
P. R. R.....	1051	\$184.10	\$349.65
N. Y. C.—P. & L. E.—W. M. (York, Pa.) P. R. R. ¹	958	191.18	377.64
Wab.—W. & L. E.—P. & W. Va.—W. M. (Fulton Jct. Md.) P. R. R. ²	938	232.08	409.32

¹ This is a typical example of the route referred to in the report and order of the Commission of March 18, 1943, as route 1, which embraces the use of the New York Central to Youngstown, Ohio, and the Pittsburgh & Lake Erie up to Connellsville, Pa.

² This is a typical example of the route referred to as route 2, which embraces the use of the Wabash to Toledo, Ohio, the Wheeling & Lake Erie to Pittsburgh Junction, Ohio, and the Pittsburgh & West Virginia up to Connellsville, Pa.

[fol. 22] The cost data so introduced were uncontroverted and established that whether comparison were made of the proposed routes which the Commission has now prescribed with the direct route of the Pennsylvania, or with the Pennsylvania's route involving out-of-line service via and transit at Hagerstown, the costs of transportation via the routes now prescribed would be greater. The Commission failed to make any finding in accordance with this uncontroverted evidence, and failed to make any finding concerning the comparative costs of transportation over the routes which

it has prescribed as compared with those over the existing routes. The Commission disregarded the said cost data on the stated ground that "its value, if any, is limited to average system costs of all less-than-carload and carload freight, while here we are dealing with a heavy loading commodity moving comparatively longer distances in well defined channels," although the record showed that the system costs for each road had been treated in accordance with the said formula of the Commission's Bureau of Statistics which provided adjustments for differences in length of haul, that costs applicable to less-carload traffic had been eliminated from the study, and that complainant's traffic was not "heavy loading" as compared with the average load of revenue carload freight for the railroads involved in the routes prescribed.

XXI

The Commission made no finding that the existing direct routes of the Pennsylvania, or the existing routes of the Pennsylvania via Hagerstown which involve out-of-line service, were not adequate, or did not furnish adequate [fol. 23] transportation; and its ultimate finding that the routes which it has prescribed are needed to provide adequate transportation is not supported by substantial evidence but is contrary to the record.

XXII

The Commission made no finding that the routes which it has prescribed would be more efficient or more economic from the standpoint of railroad transportation or operation; and its ultimate finding that the routes which it has prescribed are needed to provide "more efficient" and "more economical transportation" is not supported by substantial evidence but is contrary to the record.

XXIII

The Commission found:

"That the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, is evidenced by the fact that, in order to meet the demands of customers for prompt delivery, complainant shipped 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junc-

tion thence by truck to points on the Del-Mar-Va peninsula. The fact that the proposed routes would be more economical to the shipper is shown by the fact that the saving in transportation charges would be 4.5 cents per 100 pounds on all grain and grain products moving over those routes and transited at Hagerstown, as compared with the charges over routes of the Pennsylvania via Enola Yard heretofore described."

[fol. 24] Predicated upon these findings the Commission made its ultimate finding as follows:

"We find that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation and should be established, subject to the lowest through rates contemporaneously maintained on the same commodities from the same origins to the same destinations over the direct routes of the Pennsylvania, or over routes in which the Pennsylvania is a participating carrier via Enola yard near Harrisburg."

XXIV

No railroad, which was a defendant in the proceeding before the Commission or which is a petitioner herein, consented that the Commission might require, as it has done by its order of March 18, 1943, that such railroad participate in through routes which embrace "substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such * * * through routes," which is to say to require such railroad to "short-haul" itself.

XXV

The said order of March 18, 1943, is beyond the statutory power of the Commission in that, in violation of the provisions of Section 15(4) of the Act, Title 49 U. S. Code, Sec. 15(4), the Commission therein and thereby has required [fol. 25] and does require one or more defendant railroads, including one or more of petitioners herein, without their consent, to participate in the prescribed new through routes, which embrace substantially less than the entire length of

their several railroads and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lie between the termini of such through routes, and thereby to short-haul themselves, without having made a precedent and valid finding that the through routes prescribed are "needed in order to provide adequate, and more efficient or more economic, transportation."

XXVI

The said order of March 18, 1943, is beyond the statutory power of the Commission, in that in violation of the provisions of Section 15(4) of the Act the Commission has therein and thereby required one or more defendant railroads, including one or more petitioners herein, without their consent, to participate in the prescribed new through routes which short-hauled them, without having found, as a prerequisite, that the prescribed routes will be more efficient or more economic of operation than existing routes.

XXVII

The said order of March 18, 1943, is beyond the statutory power of the Commission, in that the Commission is not empowered to require, as it does in said order, one or more defendant railroads, including one or more petitioners herein, without their consent, to participate in new through routes which short-haul them, upon a mere finding that the prescribed through routes will be more efficient or more [fol. 26] economic from the standpoint of a shipper, and without regard to whether such through routes will be more or less efficient or economic of railroad operation.

XXVIII

The said order of March 18, 1943, is beyond the statutory power of the Commission in that therein and thereby, contrary to the provisions of Section 15(4) of the Act, the Commission has required one or more defendant railroads, including one or more of petitioners here, without their consent, to participate in new through routes which short-haul them, without a precedent finding that the prescribed through routes are "needed in order to provide adequate, and more efficient or more economic, transportation" between the termini of such through routes.

XXIX

The said orders of March 18, 1943, is beyond the statutory power of the Commission in that, having found that the existing direct through routes of the Pennsylvania between the termini of said through routes were adequate and provided adequate transportation between said termini, the Commission was not empowered to prescribe the new through routes which it has ordered, and which short-haul one or more defendant railroads, including one or more petitioners herein, without their consent.

XXX

The said order of March 18, 1943, is based upon a mistake of law in that the ultimate finding on which it rests—that the prescribed through routes “are needed to provide adequate and more efficient and adequate and more economical transportation”—is predicated upon the erroneous assumption that the Commission is empowered by Section 15(4) of the Act to require railroads, without their consent, to participate in new through routes which short-haul them, upon a mere showing that such routes will be more advantageous or will result in a lower rate to a transit operator situated between the termini of the through routes and without regard to whether they will be more efficient or more economic of operation than existing through routes.

XXXI

The said order of March 18, 1943, is based upon a mistake of law in that it is based upon the erroneous assumption on the part of the Commission that it was entitled under Section 15(4) of the Act to require defendants before it, including one or more petitioners herein, without their consent, to join in the establishment and operation of new through routes which would short-haul them, without having found or having made a precedent finding that such new through routes were needed in order to provide adequate, and more efficient or more economic, transportation between the termini of such through routes.

XXXII

The order of the Commission of March 18, 1943, is based upon a mistake of law in that in making it the Commis-

sion erroneously assumed that it was empowered to prescribe additional through routes which short-hauled defendant railroads without their consent if needed in order to provide adequate, and more efficient or more economic, transportation from the standpoint of the shipper, even though less adequate, and less efficient or less economic, from the standpoint of railroad operation.

[fol. 28]

XXXIII

The said order of March 18, 1943, is arbitrary, capricious, and without warrant in law, in that it rests upon a finding that the prescribed new through routes "are needed to provide adequate and more efficient and adequate and more economical transportation," although the uncontradicted evidence of record shows that the existing routes provide adequate transportation and that the routes prescribed are less efficient and less economic of operation than existing routes.

XXXIV

The said order of March 18, 1943, and the ultimate finding of the Commission on which it rests, are without support in the evidence and are contrary to the evidence, and accordingly are arbitrary and without warrant in law.

XXXV

The said order of March 18, 1943, is arbitrary and without warrant of law in that in making it the Commission did not observe the essentials of a fair hearing and the requirements of due process but disregarded defendants' uncontroverted evidence, which was competent, relevant, and material to the issues before it, and made findings not supported by the evidence but contrary to the evidence, all in violation of the Fifth Amendment to the Constitution of the United States.

XXXVI

The said order of March 18, 1943, is arbitrary and without warrant in law, and without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, in that it is predicated in part upon findings [fol. 29] as to the adequacy, efficiency, and economy of the prescribed routes which rest not upon the evidence but upon a finding that the Pennsylvania, one of the defendants, and

a petitioner herein, failed to perform its duty, under Section 3(4) of the Act, Title 49 U. S. C. 1940 ed. Sec. 3(4), to afford all reasonable, proper, and equal facilities for the interchange of traffic with the Western Maryland, although no issue under that section was presented or tried, and no notice was given of any such issue to be heard or determined.

XXXVII

The said order of March 18, 1943, is based upon a mistake of law in that the Commission in making the findings upon which it rests erroneously assumed that, in determining the relative efficiency and economy of proposed and existing routes, it might disregard evidence that the proposed routes involved the use of interchange points not consistent with efficient and economic operation on the ground that any such inefficient or uneconomic operation constituted a failure on the part of the railroads involved to perform their duty under Section 3(4) of the Act to afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines.

XXXVIII

The said order of March 18, 1943, is arbitrary and without warrant in law in that in prescribing through routes via Fulton Junction the Commission, acting without support in the evidence and contrary to the evidence found that the evidence does not show that the operating conditions at Fulton Junction are any more difficult than at Hagerstown.

[fol. 30]

XXXIX

The said order of March 18, 1943, is arbitrary and without warrant in law in that the findings of greater efficiency and greater economy on which it rests is without support in the evidence and is directly contrary to the evidence which shows that to typical destinations the service over the prescribed routes would be slower than over the existing routes.

XL

The said order of March 18, 1943, is based upon a mistake of law in that the Commission's finding that the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, rests upon the fact that

complainant shipped certain cars from Hagerstown over the Western Maryland and Reading railroads to Elsmere Junction, Del., and thence by truck to destinations on the Peninsula, although Section 15(4) of the Act does not contemplate the comparison of rail-truck routes with all-rail routes, and although such a comparison does not meet the statutory requirement of clause (b) of said section.

XLI

The said order of March 18, 1943, is arbitrary and without warrant in law in that it rests in part upon findings, which are not supported by the record but are contrary to the record, that the prescribed routes would not short-haul any defendants other than the Pennsylvania and that the Pennsylvania is the only carrier that would participate in those routes that invokes the short-hauling provision.

[fol. 31]

XLII

Petitioners, although they firmly believe, and are so advised by counsel, that the said orders are unlawful and void, may not, nevertheless, safety fail, on and after November 17, 1943, to obey said orders, and if petitioners should do so and the order of March 18, 1943, should thereafter be held valid in any respect, petitioners and each of them would be subject to the heavy penalty of Five Thousand Dollars (\$5,000) for each day each violation thereof may continue, as provided in Section 16(8) of the Interstate Commerce Act, 49 U. S. Code, Sec. 16(8), and the petitioners would suffer irreparable injury and damage for which there is no remedy at law.

Wherefore, petitioners, being without adequate remedy at law, respectfully pray:

First: That upon the filing of this petition, the Judge of this Court shall call to his assistance, in the hearing and determination of this cause, two other Judges, of whom at least one shall be a Circuit Judge;

Second: That process may issue against the defendant United States of America;

Third: That after not less than three days' notice to the Interstate Commerce Commission and to the Attorney General of the United States, as provided by law, a hearing shall

be held, and a temporary stay or suspension of the order of the Interstate Commerce Commission in its Docket No. 28647, dated March 18, 1943, be issued pending hearing and determination of petitioners' application for interlocutory and permanent injunctions, for the duration of sixty days.

Fourth: That after not less than five days' notice to the Interstate Commerce Commission and to the Attorney General of the United States, as provided by law, a hearing shall be held, and an interlocutory injunction be issued staying and suspending the said order of the Interstate Commerce Commission.

Fifth: That on final hearing of this cause a decree be entered herein, enjoining, setting aside, annulling, and suspending the said order of the Interstate Commerce Commission and permanently enjoining the enforcement, execution, and operation thereof.

Sixth: That this Court grant to the petitioners such other and further relief as by it may be deemed proper in the premises.

Respectfully submitted, Wm. Pepper Constable, 1000 Maryland Trust Building, Baltimore 2, Md.; Francis R. Cross, Baltimore & Ohio Bldg., Baltimore, Md.; Joseph F. Eshelman, Broad St. Station Bldg., Philadelphia 4, Pa., Attorneys for Petitioners; H. C. Barron, Charles Clark, A. B. Enoch, P. F. Gault, Thomas P. Healy, H. H. Larimore, A. H. Lossow, W. A. Northcutt, L. H. Strasser, Carson L. Taylor, of Counsel.

November 4, 1943.

[fol. 33] *Duly sworn to by John B. Large. Jurat omitted in printing.*

[fol. 34]

EXHIBIT "A" TO PETITION

Before the Interstate Commerce Commission

Docket No. 28647

D. A. STICKELL & SONS, INC., Complainant,

vs.

THE ALTON RAILROAD COMPANY,
 Alton and Southern Railroad,
 The Atchison, Topeka and Sante Fe Railway Company,
 The Baltimore and Ohio Railroad Company,
 The Belt Railway Company of Chicago,
 The Chesapeake and Ohio Railway Company,
 Chicago and Eastern Illinois Railroad Company,
 Chicago & Illinois Midland Railway Company,
 Chicago and North Western Railway Company (Charles
 M. Thomson, Trustee),
 Chicago, Burlington & Quincy Railroad Company,
 Chicago Great Western Railway Company,
 Chicago, Indianapolis and Louisville Railway Company
 (Holman D. Pettibone, Trustee),
 Chicago, Milwaukee, St. Paul and Pacific Railroad Com-
 pany (Henry A. Scandrett, Walter J. Cummings and
 George I. Haight, Trustees),
 The Chicago, Rock Island and Pacific Railway Company
 (Frank O. Lowden, James E. Gorman and Joseph B.
 Fleming, Trustees),
 Chicago South Shore and South Bend Railroad,
 [fol. 35] The Detroit and Toledo Shore Line Railroad Com-
 pany,
 Detroit, Toledo and Ironton Railroad Company,
 Elgin, Joliet and Eastern Railway Company,
 Illinois Central Railroad Company,
 Indiana Harbor Belt Railroad Company,
 Louisville and Nashville Railroad Company,
 The Minneapolis & St. Louis Railroad Company (L. C.
 Sprague, Receiver),
 Minneapolis, St. Paul & Sault Ste. Marie Railway Company
 (G. W. Webster and Joseph Chapman, Trustees),
 Missouri Pacific Railroad Company (Guy A. Thompson,
 Trustee),
 The New York Central Railroad Company,
 The New York, Chicago and St. Louis Railroad Company,

The Pennsylvania Railroad Company,
 Pere Marquette Railway Company,
 The Pittsburgh and Lake Erie Railroad Company,
 The Pittsburgh & West Virginia Railway Company,
 Southern Railway Company,
 Toledo, Peoria & Western Railroad,
 Wabash Railway Company (Norman B. Pitcairn and Frank
 C. Nicodemus, Jr., Receivers),
 Western Maryland Railway Company,
 The Wheeling and Lake Erie Railway Company,
 The Cleveland, Cincinnati, Chicago and St. Louis Railway
 Company (The New York Central Railroad Company,
 Lessee),
 The Michigan Central Railroad Company (The New York
 Central Railroad Company, Lessee), Defendants

[fol. 36]

Complaint

I

The complainant is a corporation engaged in milling, mixing of grain, grain products and grain by-products and in the manufacture of mixed live stock and poultry feeds, at Hagerstown, Maryland. Complainant draws its materials generally from territories of production in the west and after manufacturing the products therefrom at Hagerstown ships said products to points of consumption, many of which are located in Eastern Trunk Line and New England territories.

II

That the defendants above named are common carriers engaged in the transportation of property wholly by railroad between points in the States of Maryland, Pennsylvania, New Jersey, New York and points in other states of the United States, and the District of Columbia, and as such common carriers are subject to the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof and supplementary thereto.

III

That the raw materials and products of complainant are as follows:

Barley, Buckwheat, Corn, Feterita, Kaffir Corn, Milo
 Maize, Oats, Rye, Screenings (Grain), Speltz, Wheat,

Bran, in bulk (made from grain only), Bran in sacks (made from grain only), Clipped Oat By-Products (oat clippings), Corn and Oats Chop, Corn (cracked), Corn [fol. 37] (ground), Feed Barley (ground), Feed, Corn (ground), Feed Hominy, Feed, Mill, viz: Bran, Middlings, Ship Stuff, Shorts, mixed carloads, Feed, Oats (ground), Feed Rye (ground), Feed, Wheat (ground), Flour (made from grain only), Flour, Compound (self-rising flour), Hominy, Hulls, Barley, Buckwheat or Oats, Meal, Corn, Meal, Oat, Middlings, Oat Offal, Oats, Ground, Oats, Rolled, Screenings, consisting of a mixture of Offal and Wild Seed, cleaned from various grains, Wheat, Cracked, Cake Cottonseed Oil (ground), Cake, Linseed Oil (ground), Cake, Soya Bean (ground), Feed, Alfalfa, Feed, Animal, Poultry or Pigeon, Feed, Gluten, Meal, Alfalfa, Meal, Gluten, Meal, Linseed Oil, Meal, Soya Bean, Coconut (copra) Oil Cake Meal, Meal, Cob, Meal, Peanut Oil.

IV

Complainant is denied the application of reasonable through routes and joint rates and charges over the lines of defendants, and therefore petitions the Commission to exercise the power that is conferred upon it by Section 15 of the Interstate Commerce Act as amended, and establish through routes and joint rates and charges, and reasonable rules, regulations and practices applicable to the transportation of the commodities named in paragraph 3 hereof and milled, mixed into products at Hagerstown in transit, and destined to points in Trunk Line and New England territories. The tariffs involved, among others, are:

Central Freight Association, Tariff 470B, I. C. C. 3490, issued by B. T. Jones, Agent, Dearborn St., Chicago.

[fol. 38] Central Freight Association, Tariff 245G, I. C. C. 3356, issued by B. T. Jones, Agent, Dearborn St., Chicago.

Union Line Basing Book, Pennsylvania Railroad Company, I. C. C. 13.

Western Maryland Railway Company, Transit Tariff I. C. C. 8625, issued by the Western Maryland Railway Co., Baltimore, Maryland.

V

While complainant draws grain and grain products from many points in the grain producing regions on the lines of defendants, an example of a reasonable route for the transportation of the traffic in question via Hagerstown to desired markets would be over what is generally termed the Pittsburgh Dispatch Route, substantially as follows: Commodities hereinbefore described, originating generally in Western Trunk Line and Central territories, on the New York Central Railroad and its connections, moving thence via that Railroad to the Pittsburgh and Lake Erie; thence via the Western Maryland through Hagerstown to York, Pennsylvania or to Fulton Junction, Baltimore, Maryland; thence via the Pennsylvania Railroad to destinations thereon down the Eastern Shore of Maryland, to Cape Charles, Virginia; and also to points on said Railroad and its connections in Eastern Pennsylvania and New Jersey, to New York City.

An illustration of another reasonable route for the transportation of the traffic in question via Hagerstown to desired markets would be substantially as follows: Commodities hereinbefore described originating on the Wabash Railroad and its connections, moving thence via that Railroad to the Wheeling and Lake Erie Railroad, the Pittsburgh and West Virginia Railroad; thence via the Western Maryland Railroad, through Hagerstown to York, or Fulton Junction, Baltimore, Maryland; thence via the Pennsylvania Railroad, to destinations hereinbefore described.

VI

The commodities hereinbefore described originate at points on the lines of defendants of which the following are representative: Antwerp, Toledo, Grelton, Circleville, Napoleon, Painesville, and Chillicothe, Ohio; Kempton, Indianapolis; Decatur, and Kirklin, Indiana; Chicago, Belleville, Pekin, Rockford, Flagg Center, and Peoria, Illinois; Ottawa Lake, Michigan; Milwaukee, Wisconsin; Cedar Rapids, Burlington, Davenport, Vetter, Kamrar, Livermore, Florence, in the State of Iowa; New Prague, New Ulm, Minneapolis, Minnesota; Omaha, Nebraska; Kansas City, and St. Louis, Missouri.

Complainant desires to transport the said commodities from the region of which the foregoing points are representative, via the lines of defendants, through Hagerstown, as pointed out hereinbefore.

VII

That by reason of the facts stated in the foregoing paragraphs complainant has been subjected to the payment of rates and charges, and to rules and practices of transportation which were when enacted and still are, unjust and unreasonable in violation of Section 1 and other provisions of the Interstate Commerce Act.

[fol. 40] Wherefore, complainant prays that defendants may be required to answer the charges herein; that after due hearing and investigation, an order be made commanding said defendants to cease and desist from the aforesaid violations of said act, and establish and put in force and apply in future to the transportation of the commodities named in paragraph 3 through Hagerstown on a transit practice, in lieu of the routes, rates, rules, practices and charges now in force, such other routes, rates, rules, practices and charges as the Commission may deem reasonable and just and nonprejudicial, and that such other and further order or orders may be made as the Commission may consider proper in the premises.

D. A. Stickell & Sons, Inc., by H. K. Stickell, Treasurer; C. R. Hillyer, Attorney for Complainant, Field Building, Chicago, Illinois.

Dated at Chicago, April 10, 1941.

[fol. 41] *Duly sworn to by H. R. Stickell. Jurat omitted in printing.*

[fol. 42]

EXHIBIT "B" TO PETITION

INTERSTATE COMMERCE COMMISSION

No. 28647

D. A. STICKELL & SONS, INC.,

v.

THE ALTON RAILROAD COMPANY, ET AL.

Submitted March 5, 1942. Decided March 18, 1943

Through routes from St. Louis, Mo., Chicago, East St. Louis, and Cairo, Ill., and origins in central territory via Hagerstown, Md., to destinations on the Pennsylvania Railroad Company east of York, Pa., and Fulton Junction (Baltimore), Md., and between New York, N. Y., and Cape Charles, Va., inclusive, prescribed.

C. R. Hillyer for complainant.

Francis R. Cross and *Joseph F. Eshelman* for defendants.

R. V. Craig for intervener.

Report of the Commission

Division 2, Commissioners Aitchison, Splawn, and Alldredge.

By Division 2:

Defendants filed exceptions to the report proposed by the examiner, complainant replied, and the proceeding was orally argued.

By complaint filed April 9, 1941, as amended at the hearing, it is alleged that complainant is denied reasonable through routes and joint rates on grain, grain products, and byproducts moving from origins in Ohio, Indiana, Illinois, [fol. 43] Wisconsin, Iowa, Minnesota, Omaha, Nebr., and Missouri to Hagerstown, Md., there mixed into livestock and poultry food, and the manufactured product reshipped to destinations on the lines of The Pennsylvania Railroad Company east of York, Pa., and Fulton Junction (Baltimore), Md., and between New York, N. Y., and Cape Charles, Va., inclusive, and particularly to destinations in

the so-called Del-Mar-Va peninsula, the latter being that part of Delaware, Maryland, and Virginia south of Wilmington, Del., and between the Chesapeake and Delaware Bays. We are asked to prescribe reasonable and nonprejudicial through routes and joint rates.

The complaint as originally filed sought through routes via Hagerstown to "points in trunk line and New England territories" and The Baltimore and Ohio Railroad Company was named as one of the defendants. The complaint was amended at the hearing so as to narrow the relief sought to through routes at the present joint rates to the described destinations on the Pennsylvania. The transit, rate, and restricted routing situation on the Baltimore & Ohio are substantially similar to those on the Pennsylvania and it fears that, if the relief here sought should be granted, a precedent will be established that will adversely affect its interests. Accordingly, it introduced considerable evidence and otherwise participated in the proceeding. The Western Maryland Railway Company does not oppose the complaint.

Complainant manufactures livestock and poultry feed at Hagerstown, Md., by milling and mixing grain, grain products, and various byproducts obtained principally from grain elevators, grain mills, vegetable oil mills, and food-[fol. 44] manufacturing plants in Kansas, Missouri, Minnesota, Idaho, Illinois, Indiana, and Ohio. It purchases considerable corn, barley, buckwheat, and wheat in the Cumberland Valley, thus affording a nearby market for grain grown in the vicinity of its plant. Its in-bound and out-bound tonnages, including a small quantity of articles that do not move on the grain rates, are each about 60,000 tons a year. About 10 percent of the materials used by it move in-bound and out-bound by truck, and 90 percent by rail. The bulk of its production moves to points in New England, eastern Pennsylvania, Delaware, and the Del-Mar-Va peninsula. About 50 or 60 percent of its production and about 90 percent of that part thereof that is handled by the Pennsylvania moves to points in the Del-Mar-Va peninsula. The Pennsylvania is the only railroad serving these points. In 1940, complainant shipped 675 cars out of Hagerstown via the Pennsylvania and 640 cars over lines of the Western Maryland to Shippensburg, Pa., thence the Reading Company to Elsmere Junction (Wilmington), Del., thence by motor vehicle to destinations on the Del-Mar-Va peninsula.

Complainant estimates the average loading of its in-bound shipments as 72,000 to 80,000 pounds, and that of its out-bound shipments as 46,000 pounds. The Pennsylvania shows that 217 in-bound cars handled by it during May, June, and July, 1940, averaged 66,044 pounds and that 383 out-bound cars handled by it during the period from December 1940 to May 1941 averaged 49,000 pounds.

Hagerstown is served by four railroads. It is about 79 miles east of Cumberland, Md., and about 87 miles west of Baltimore on the main line of the Western Maryland. It is the terminal of the line of the Norfolk and Western Railway [fol. 45] Company running from Roanoke, Va. It is also on a branch line of the Baltimore & Ohio 24 miles north of Weverton, Md., a main line point about 99 miles east of Cumberland, and 74.5 miles southwest of Harrisburg, Pa., on a branch line of the Pennsylvania extending from that point to Winchester, Va.

Joint through rates apply from origins to central territory and from the market points, Chicago, Ill., St. Louis, Mo., and East St. Louis and Cairo, Ill., to all points in trunk-line territory. The measure of those rates is not in issue. They are restricted by the carriers to apply over certain routes. For example, they do not apply on traffic originating in central territory destined to points on the Pennsylvania unless the Pennsylvania receives the traffic at or west of Pittsburgh, Pa. When the Pennsylvania has possession of traffic consigned to destinations on the following carriers, it is interchanged as follows: With The Central Railroad Company of New Jersey at Nanticoke, Pa.; The Delaware, Lackawanna and Western Railroad Company at Buffalo, N. Y.; the Erie Railroad Company at or west of Transfer, Pa.; the Lehigh Valley Railroad Company at Buffalo; the Reading at Harrisburg, Pa.; and the Western Maryland at Cumberland. Transit arrangements are maintained on grain, grain products, and byproducts at points directly intermediate over the tariff routes at the through rates, plus a transit change, and at some points not directly intermediate at the through rates plus a transit charge and an out-of-line charge. The general practice is that transit is permitted on a delivering line only when it receives the traffic at or west of the agreed junctions.

Transit at Hagerstown is applicable at the joint through rates from the markets and most of the origins in central

territory in connection with the Western Maryland from its [fol. 46] junctions west of Hagerstown with the Baltimore & Ohio at Cherry Run, W. Va., The Pittsburgh and Lake Erie Railroad Company and The Pittsburgh & West Virginia Railroad Company at Connellsville, Pa., The Chesapeake and Ohio Railway Company at Durbin, W. Va., and the Norfolk & Western at Hagerstown to points east of Hagerstown on the Western Maryland and over the Western Maryland from Hagerstown to Shippensburg and its connections beyond to destinations on the lines of the Central Railroad of New Jersey, Reading, The Delaware and Hudson Railroad Corporation, The Long Island Rail Road Company, The Staten Island Rapid Transit Railway Company, the Pennsylvania-Reading Seashore Lines, the Lehigh and New England Railroad Company, and The Lehigh and Hudson River Railway Company and to destinations Wilkes-Barre, Pa., and east on the Lehigh Valley, Alford, Pa., and east on the Delaware, Lackawanna & Western, to destinations in the Scranton district on lines of the Erie and the New York, Ontario and Western Railway Company, and to some destinations on the lines of the Bangor and Aroostook Railroad Company, the Maine Central Railroad, The New York, New Haven and Hartford Railroad Company, and the Boston and Maine Railroad.

The Baltimore & Ohio and Pennsylvania also maintain transit arrangements at Hagerstown restricted, as they are at other points in trunk-line territory on their lines, to traffic originated by them at or west of or received by them from their connections west of their trunk-line western termini. The routes of the Baltimore & Ohio and Pennsylvania through Hagerstown embrace cut-of-line hauls of 48 and 149 miles, respectively. The Pennsylvania's out-of-line haul is from its Enola yard (Harrisburg), Pa., to Hagerstown [fol. 47] and return. Charges in addition to the joint through rates apply for the out-of-line service. The Pennsylvania's charge is 4.5 cents per 100 pounds. Thus, in order to reach the destinations here in issue, complainant must pay 90 cents per ton in addition to the through rates and the transit charge. Its plant is on the tracks of the Western Maryland, but the Pennsylvania absorbs the Western Maryland's switching charge of \$6.93 per car each way.

Complainant does not assail the reasonableness of the through rates, the out-of-line charge, or the transit charge.

Its position is that it should not be required to pay an out-of-line haul charge in order that the Pennsylvania may obtain the long hauls from its trunk-line western termini. It desires establishment of the present joint through rates over two through routes, hereinafter referred to as routes 1 and 2, to destinations on the Pennsylvania: (1) From the markets and origins in central territory on The New York Central Railroad Company and its connections other than the Pennsylvania via New York Central to Youngstown, Ohio, Pittsburgh & Lake Erie to Connellsville, Western Maryland to Hagerstown, thence Western Maryland to York or Fulton Junction, and the Pennsylvania beyond; and (2) from the same markets and origins on the Wabash Railway Company and its connections other than the Pennsylvania in central territory via the Wabash to Toledo, Ohio, The Wheeling and Lake Erie Railway Company to Pittsburgh Junction, Ohio, Pittsburgh & West Virginia to Connellsville, Western Maryland to Hagerstown, thence Western Maryland to York or Fulton Junction, and the Pennsylvania beyond.

The joint through rates now apply over those routes up to Hagerstown with transit at that point, thence Western [fol. 48] Maryland to destinations on the Western Maryland and from Hagerstown over the Western Maryland to Shippensburg and its connections beyond, heretofore described.

The Baltimore & Ohio and Pennsylvania contend that complainant is at no substantial disadvantage because it has available "practically all of central territory" and western trunk-line territory from which it can ship to an extensive destination territory at the prescribed through rates with transit at Hagerstown, and because it has transit at Hagerstown at the through rates between points on the Norfolk & Western and other carriers in trunk-line territory and between points on the Chesapeake & Ohio and Delaware, Lackawanna & Western. They further show that other transit operators in trunk-line territory not on their direct routes have to pay either out-of-line charges in addition to the through rates or combination rates to destinations on their lines, and that destinations to which transit operators on other lines can ship at the through rates are restricted.

It is not the province of railroads to determine what markets shall be available to sellers or buyers, or, by the refusal to establish through routes or the maintenance of rate disadvantages, to restrict or circumscribe the opportunities of shippers located on other railroads to sell in markets served by them. It is their function to transport in the channels necessitated by trade conditions and not to fix limitations on commerce. The public interest demands that all shippers be accorded relatively equal opportunities to reach all reasonably available markets. The margin of profit on complainant's products is small. The two principal items entering into the selling price are the [fol. 49] amounts paid for the materials and freight charges. Feed manufacturers at the rate-break points, and at Buffalo, N. Y., Fort Wayne and Indianapolis, Ind., Cincinnati, Toledo, Cleveland, and Akron, Ohio, and Pittsburgh, Lancaster, and York, Pa., can reach the destinations here considered at the through rates, but complainant, on grain purchased at the same origins when the Pennsylvania gets the in-bound haul from or beyond its trunk-line western termini, must pay 90 cents a ton more, or, when other carriers perform the in-bound haul, combination rates. Clearly complainant is at a disadvantage.

The Baltimore & Ohio and Pennsylvania contend that a "logical and equal extension of the principle" here involved would result in wasteful cross hauling, "seriously affect the entire structure of rates on grain and grain products subject to transit in trunk-line territory," and materially reduce their revenues received from out-of-line hauls. It is not necessary to determine here whether defendants' apprehensions are well founded. It will suffice to say that, even if they were, that would be no reason for denying complainant just and reasonable through routes at the established joint rates. The routes sought up to Hagerstown are well established and generally accepted as reasonable by shippers and the carriers parties thereto to points in eastern territory. There is no showing or contention that those routes would be less economical as parts of the through routes sought to destinations considered on the Pennsylvania than to destinations on the other carriers in eastern territory. The routes sought in connection with the Pennsylvania would not only not result in any cross hauling or wasteful transportation, but they would eliminate a 149-mile out-of-line haul and two switching

interchanges at Hagerstown and would relieve the Pennsylvania from the expense of maintaining transit and absorbing the switching charges at Hagerstown. The Western Maryland would bear all the transit and switching expenses at that point.

The Pennsylvania also contends that the routes sought are not "necessary and desirable" in the public interest because of the fact that "the complaint was not supported by any shipper of grain or its products at points of origin, by any receiver of mixed feed at destinations or by producers or consumers of grain in the Cumberland Valley" and because of the fact that "upon the record there is no basis for assuming that any of these are dependent upon the transit operation being performed at Hagerstown."

In *Cancellation of Rates and Routes via Short Lines*, 245 I. C. C. 183, the Commission said: "The words 'necessary and desirable' do not in either case connote indispensability." In *Flory Milling Co. v. Central New England Ry. Co.*, 93 I. C. C. 129, the Commission said, at page 133:

It is true that no producers of the inbound commodities, retailers of complainant's products, or ultimate consumers appeared at the hearing to testify that they would be benefited by the joint rates asked. It may also be true that retailers and consumers encounter no great difficulty in securing an adequate supply of grain products and mixed feeds from mills located on established routes over which joint rates with transit apply. But an individual shipper is entitled to the reasonable use of existing transportation facilities at reasonable rates on his traffic. Further, an individual miller is a shipper and entitled to reasonable rates, rules, and regulations measured in the light of the business and transportation practices in the industry in which he is engaged.

In *D. A. Stickell & Sons, Inc., v. Western Maryland Ry. Co.*, 146 I. C. C. 609, in which contentions similar to those advanced here were made, division 4, referring to *Flory* [fol. 51] *Milling Co. v. Central N. E. Ry Co.*, *supra*, said at page 613:

Upon the complaint of a single milling firm at Bangor, Pa., we found in that proceeding that additional through routes and joint rates via that point were necessary and desirable

in the public interest, although no evidence was offered on behalf of producers of the inbound commodities, retailers of complainant's products, or ultimate consumers. We there said:

The public interest is not conserved by shutting out, by denial of joint rates, a miller from markets which he can reach by routes not necessitating the performance of a greater total service for him than the service over present routes over which joint rates apply unless some substantial right of the carriers is thereby invaded. On the other hand, we would clearly not be justified in attempting to neutralize the disadvantage of geographical location by requiring wasteful service or additional service without adequate compensation, although the shipper may be in dire need.

That decision⁷ was reversed by the Commission in 153 I. C. C. 759, because of the Supreme Court's decision in *United States v. Missouri Pac. R. Co.*, 278 U. S. 269. The principle announced in the quotation was not questioned by the Commission or the Court and was not reversed. It is sound, and applicable here.

We conclude that the routes sought are necessary and desirable in the public interest, but the Pennsylvania contends that even if that be true the Commission is without authority to require the establishment of the routes sought as they would short-haul the Pennsylvania without its consent.

Both parties use Chicago as a representative origin and Salisbury, Md., as a representative destination, and the places will be so used here. The distance over the short tariff route of the Pennsylvania between those points is 902 miles. Its haul from Fulton Junction is 155 miles and from York 174 miles. The distance over route 1 via Ful-[fol. 52] ton Junction is 946 miles and via York 958 miles, and over route 2 via Fulton Junction 938 miles and via York 950 miles. It is evident that the Pennsylvania's direct route is not unreasonably long and that the prescription of either route 1 or 2 would require the Pennsylvania to embrace in such route substantially less than the entire length of its railroad which lies between the termini of such route. In *D. A. Stickell & Sons, Inc., v. Western Maryland Ry. Co.*, *supra*, decided May 7, 1929, the Commission following *United States v. Missouri Pac. R. Co.*, *supra*,

found that it did not have power to require the establishment among other routes of route 1.

Section 15 (4) of the Interstate Commerce Act was amended, however, September 18, 1940. Among other changes not here material there was added thereto The exception and proviso which are italicized in the following quotation therefrom:

In establishing any such through route the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) *unless the Commission finds that through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation: Provided, however, That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic.* No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs.

The carriers that would participate west of Hagerstown over routes 1 and 2 would receive the same hauls they now [fol. 53] receive on traffic via Hagerstown to destinations in trunk-line territory. The Pennsylvania is the only carrier that would participate in those routes which invokes the short-hauling restriction in section 15 (4), but as no additional routes are sought on traffic originated by it the underlined proviso does not affect the issues here considered. The question of whether the Commission is precluded from prescribing the routes sought depends on whether those routes are needed in order to provide adequate and more efficient or adequate and more economic transportation.

The Pennsylvania contends that its present routes are adequate, efficient, and economical. It maintains scheduled fast trains that operate frequently over direct routes, that do not go through Hagerstown, from the rate-break points and origins on its line and from its junctions with other carriers in central territory to the destinations here considered. Its main routes from the west are via Pittsburgh and its Enola yard, which is across the Susquehanna River from Harrisburg. Traffic moving north, south, and east from Harrisburg is classified at that yard. An average of 65 scheduled trains and in addition thereto extra sections of those trains, extra trains, and local trains move into and out of that yard each day. Grain handled by the Pennsylvania moving to and from Hagerstown moves through that yard. Three scheduled trains operate each way daily between Enola yard and Hagerstown, and additional sections and extra trains are used when needed. There seems to be no question but that the Pennsylvania maintains sufficiently frequent service to meet all reasonable demands and that it can and does furnish adequate facilities to handle any and all grain traffic likely to be [fol. 54] given to it at western origins for movement over its direct routes or over its routes via Hagerstown to eastern destinations.

Complainant does not question the adequacy, efficiency, or economy of the Pennsylvania service over its direct routes but only over its route via Hagerstown. As to the latter, it contends the routes sought would be more adequate, efficient, and economic from the shippers' standpoint. Based on the fact that the out-of-line and interchange service at Hagerstown would be eliminated, on the fact that a car leaving Hagerstown via the Western Maryland late in the morning arrives at Elsmere Junction (Wilmington) on the Reading the next morning, and on information received from the Western Maryland, complainant estimates that it would save 2 days in reaching destinations in the Del-Mar-Va peninsula if the routes sought were established. Its experience shows that it takes 1 day each way between Harrisburg and Hagerstown and 1 day for each interchange between the Western Maryland and Pennsylvania at Hagerstown, making a total of 4 days required for the out-of-line service, and that it takes an average of 3 to 4 days for the movement of a car from its plant to destinations on the Del-Mar-Va peninsula.

The Pennsylvania does not categorically deny the latter statement but says "ordinarily speaking" it holds itself out to "make" established schedules from Hagerstown of 24.75 and 31.5 hours to Salisbury and 29 hours 55 minutes and 39.25 hours to Cape Charles, Va. It does not allege or show that it maintains through train service from Hagerstown to points on the Del-Mar-Va peninsula. In fact, the evidence indicates that it does not. The Pennsylvania says that there have been delays in classification and [fol. 55] at times excessive traffic and emergency conditions which have prevented it from maintaining those schedules. A witness for the Pennsylvania expressed the opinion that physical operations, presumably after the interchange at Hagerstown, are better via Enola yard than via York or Fulton Junction and estimates that a movement from Hagerstown via York would require 36.5 hours to Salisbury and 49.25 hours to Cape Charles and via Fulton Junction, 33 hours to Salisbury, and 45.75 hours to Cape Charles. No explanation is given why a longer time is estimated for the haul from Salisbury to Cape Charles for traffic moving over the sought routes than is allowed in the present schedules for traffic moving via Enola yard.

The Pennsylvania interchanges traffic with the Western Maryland at York and Fulton Junction only once every 24 hours. Consequently, the interchange tracks at those junctions are now used to near, and sometimes to full, capacity. The limited facilities and operating difficulties encountered at or near those plants are described in considerable detail. The evidence does not show, however, that those conditions are any more difficult than operating difficulties encountered at Hagerstown.

It is the duty of carriers to afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines. That requirement of section 3 (3) by necessary implication means that such interchange facilities must be adequate to handle all traffic that may reasonably be expected to require interchange at such points. It is no defense to a complaint seeking through routes necessary and desirable in the public interest to show that a carrier has failed to perform its duty to establish such facilities and that by reason of that neglect of duty it is more convenient from an operating [fol. 56] standpoint for it to haul traffic 149 miles out of

line. As far back as 1926, in *Manufacturers Assn. of York, Pa., v. Pennsylvania R. Co.*, 107 I. C. C. 219, the Pennsylvania advanced inadequacy of interchange facilities at York as a reason why it should not be required to establish reciprocal switching at that point. In that proceeding the Commission said, at page 239:

The record warrants the statement that existing facilities may, with comparatively slight trouble and reasonable expense, be made adequate to effect interchange at York without undue interference with other traffic. But even inadequacy of facilities is no defense. In our former report we said:

The fact that the interchange facilities are inadequate for convenient operation is not of itself a defense if through routes are shown to be necessary or desirable in the public interest. Facilities for interchange exist; if inadequate, they may be made adequate to perform the service which the law requires. *St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co.*, 26 I. C. C. 226, 231.

The Pennsylvania also contends that it is more economical to transport traffic over its direct route and its routes via Hagerstown than it would be to transport it over routes 1 and 2. As evidence thereof, it introduced a cost study based on annual reports filed with the Commission in which the formula used by the Commission's Bureau of Statistics in its Statement No. 3812 of March 1938 was followed generally with some variations. That study purports to show the cost of transporting a car of grain weighing 33 tons over the direct routes of the Pennsylvania, its routes via Hagerstown, routes 1 and 2, and other routes between selected points. Among other things, it purports to show that, based on the Pennsylvania's average system costs and the average system costs of the other carriers which would participate in routes 1 and 2, it costs less to transport a car of grain over the Pennsylvania's routes via [fol. 57] Hagerstown than it would be to transport it over routes 1 or 2. The Pennsylvania does not contend that the study shows the cost of handling grain to the destinations under consideration but states that it furnishes a "reasonably reliable basis for determining the relative costs of transportation." Even as to relative costs, its value, if any, is limited to average system costs on all less-than-car-

load and carload freight, while here we are dealing with a heavy loading commodity moving comparatively long distances in well-defined channels.

The through rates on grain were established for application not only for direct single-line hauls but also for joint-line hauls over all reasonable routes. As has already been shown, well established freight routes, including those here sought up to Hagerstown, are maintained at the joint through rates via Hagerstown to destinations on the Western Maryland and many of its connections east of Hagerstown. There is nothing to indicate and it is not even specifically contended that the established joint through rates would not be reasonable over the sought routes to destinations on the Pennsylvania to the same extent that they are over the routes over which they apply to other destinations in eastern territory.

Yet the Pennsylvania, while contending that from the standpoint of operating conditions and operating costs its routes via Enola yard and Hagerstown are more efficient and economical than other routes via Hagerstown, inconsistently contends and introduced considerable evidence to show that its 4.5-cent out-of-line charge, approximately 17 percent of the prescribed rate from Chicago to Salisbury, in addition to the through rates is justified by the out-of-line haul. The justification for a special charge for out-of-line hauls is that routes that require such additional services are [fol. 58] not comparable with and are less economical than routes that do not.

Prior to the amendment of section 15 (4), the Commission's power to prescribe through, all-rail, routes which would short haul any carrier participating therein without its consent was limited to instances where the inclusion of the entire length of its railroad between the termini of such route would make the through route unreasonably long as compared with another practicable route which could otherwise be established. While that section limited the powers of the Commission, it left it entirely within the discretion of the carrier as to whether it would insist upon its long haul. It was at liberty to voluntarily join in any route which it believed to be more adequate, efficient, and economical than a route embracing its entire line, although the latter route might not be unreasonably long. Therefore, no exception to the restriction on the Commission's power was necessary to protect carriers' interests.

As to the shippers, however, a different situation existed. It rests within the power of carriers by insistence on their long hauls to place localities and shippers on the lines of other carriers or not on their direct lines at severe rate and competitive disadvantages and, as in the instant case, to deprive shippers of relatively equal opportunities to compete in markets served only by them. Carriers in many instances availed themselves of the right to their long haul, and the disadvantaged localities and shippers had no redress. It was to remedy that situation, apparently, that the second exception was added. The Commission was thereby given authority, when it finds that through routes are "needed in order to provide adequate and more efficient or adequate and more economic transportation," [fol. 59] to require the establishment of such routes although they may short haul one or more of the participating carriers. We interpret that exception to mean adequate and more efficient and more economic from the public's or shippers' as well as the participating carriers' standpoint. That such was the intent of the Congress is evident from the conditions the amendment was apparently designed to correct, from the fact that in the added proviso even the preference to be accorded the originating carrier is made subservient to the public interest, from both limitations on the right of a carrier to retain its long haul, and from the fact that the Congress specifically provided that, as between carriers, "No through route or joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs."

That the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, is evidenced by the fact that, in order to meet the demands of customers for prompt delivery, complainant shipped 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction thence by truck to points on the Del-Mar-Va. peninsula. The fact that the proposed routes would be more economical to the shipper is shown by the fact that the saving in transportation charges would be 4.5 cents per 100 pounds on all grain and grain products moving over those routes and transited at Hagerstown, as compared with the charges over routes of the Pennsylvania via Enola yard heretofore described.

We find that the two routes sought are necessary and desirable in the public interest and that they are needed to [fol. 60] provide adequate and more efficient and adequate and more economical transportation and should be established, subject to the lowest through rates contemporaneously maintained on the same commodities from the same origins to the same destinations over the direct routes of the Pennsylvania, or over routes in which the Pennsylvania is a participating carrier via Enola yard near Harrisburg. An appropriate order will be entered.

[fol. 61] EXHIBIT "C" TO PETITION

CORRECTED ORDER

At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D. C., on the 18th day of March, A. D. 1943.

No. 28647

D. A. STICKELL & SONS, INC.

v.

THE ALTON RAILROAD COMPANY; ALTON AND SOUTHERN RAILROAD; The Atchison, Topeka and Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Belt Railway Company of Chicago; The Chesapeake and Ohio Railway Company; Chicago and Eastern Illinois Railroad Company; Chicago & Illinois Midland Railway Company; Chicago and North Western Railway Company (Charles M. Thomson, Trustee); Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railway Company; Chicago, Indianapolis and Louisville Railway Company (Holman D. Pettibone, Trustee); Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees); The Chicago, Rock Island and Pacific Railway Company (Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees); Chicago South Shore and South Bend Railroad; The Detroit and Toledo Shore Line Railroad Company; Detroit, Toledo and Ironton Railroad Company; Elgin, Joliet and Eastern Railway

Company; Illinois Central Railroad Company; Indiana Harbor Belt Railroad Company; Louisville and Nash-[fol. 62] ville Railroad Company; The Minneapolis & St. Louis Railroad Company (L. C. Sprague, Receiver); Minneapolis, St. Paul & Sault Ste. Marie Railway Company (G. W. Webster and Joseph Chapman, Trustees); Missouri Pacific Railroad Company (Guy A. Thompson, Trustee); The New York Central Railroad Company; The New York, Chicago and St. Louis Railroad Company; The Pennsylvania Railroad Company; Pere Marquette Railway Company; The Pittsburgh and Lake Erie Railroad Company; The Pittsburgh & West Virginia Railway Company; Southern Railway Company; Toledo, Peoria & Western Railroad; Wabash Railway Company (Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers); Western Maryland Railway Company; The Wheeling and Lake Erie Railway Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company (The New York Central Railroad Company, Lessee); and The Michigan Central Railroad Company (The New York Central Railroad Company, Lessee).

This proceeding being at issue upon complaint and answers on file and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and the said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before [fol. 63] June 28, 1943, by notice to this Commission and the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act and thereafter to maintain and apply to the interstate transportation of grain, grain products and by-products taking the same rates as grain, in carloads, from (a) points on the lines of the New York Central Railroad Company and the Wabash Railway Company and their connections other than the Pennsylvania Railroad Company in Ohio, Indiana, and Illinois, and (b) the market points of St. Louis, Mo., and Chicago, East St. Louis and Cairo, Ill., when originating beyond those market points,

over routes embracing (1) the lines of the New York Central Railroad Company to Youngstown, Ohio, Pittsburgh and Lake Erie Railroad Company to Connellsville, Pa., Western Maryland Railway Company to Hagerstown, Md., thence Western Maryland Railway Company to York, Pa., or Fulton Junction, Md., and the Pennsylvania Railroad Company to destinations on its lines east of York and Fulton Junction and between New York, N. Y., and Cape Charles, Va., and (2) the lines of the Wabash Railway Company to Toledo, Ohio, the Wheeling and Lake Erie Railway Company to Pittsburgh Junction, Ohio, the Pittsburgh & West Virginia Railway Company to Connellsville, thence over the routes through Hagerstown, as hereinbefore described to the same destinations, joint rates which shall not exceed the lowest through rates contemporaneously maintained on like traffic from the same origins to those destinations over the direct routes of the Pennsylvania Railroad Company or over routes in which it is a participating carrier via its Enola Yard near Harrisburg, Pa.

[fol. 64] *And it is further ordered*, That this order shall continue in force until the further order of the Commission.

By the Commission, division 2.

W. P. Bartel, Secretary. (Seal.)

[fol. 65] EXHIBIT "D" TO PETITION

CORRECTED ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 4th day of October, A. D. 1943.

No. 28647

D. A. STICKELL & SONS, INC.,

v.

THE ALTON RAILROAD COMPANY, ET AL.

Upon further consideration of the record in the above-entitled proceeding, and upon consideration of petition of defendants for reargument and reconsideration:

It is ordered, That said petition be, and it is hereby, denied.

By the commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 66] IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERVENTION OF INTERSTATE COMMERCE COMMISSION—Filed
Dec. 17, 1943

To the Honorable the Judges of Said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150 (U. S. Code, Tit. 28, Sec. 45a), providing, in part, "that the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement," we hereby enter the appearance of the Interstate Commerce Commission as a party defendant, and of ourselves as its counsel, in the above-entitled suit.

Interstate Commerce Commission. By Daniel W. Knowlton, Chief Counsel; E. M. Reidy, Assistant Chief Counsel.

December 15, 1943.

[fol. 67] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed
December 17, 1943

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, for answer to the petition in this case, answers and says:

I

Answering paragraphs I to V, inclusive, of the petition, the Commission admits the allegations thereof, except the Commission denies that this suit is brought under the general equity jurisdiction of this Court, as alleged in paragraph III.

II

Answering paragraph VI of the petition, the Commission admits the allegations thereof, except that the Commission

alleges that the effective date of its order is presently March 17, 1944, and not December 17, 1943.

[fol. 68]

III

Answering paragraphs VII and VIII of the petition, the Commission admits the allegations thereof, but respectfully refers the Court to the complaint itself, Exhibit A to the petition, for more full and complete information as to its contents.

IV

Answering paragraph IX of the petition, the Commission admits the allegations thereof.

V

Answering paragraph X of the petition, the Commission admits that the transit arrangements are maintained in the tariffs of petitioners; that out-of-line hauls of 149 and 48 miles exist on the routes of the Pennsylvania and Baltimore & Ohio Railroads, respectively, for which back-haul charges are assessed under the tariffs, in addition to the joint through rates. The Commission alleges that out-of-line hauls and back-haul charges do not exist on the direct and more economical routes prescribed by the Commission in its report and order herein. The Commission admits that the Pennsylvania also assesses an additional transit charge; that the plant of complainant is on the tracks of the Western Maryland Railroad and that the Pennsylvania absorbs switching charges as is the usual custom.

VI

Answering paragraph XI of the petition, the Commission admits that the complainant did not question the reasonableness of the charge of the Pennsylvania Railroad for out-of-line service on its round-about route. The Commission alleges that there is no out-of-line service or back-haul [fol. 69] charge therefor upon the direct and economical routes prescribed by the Commission.

VII

Answering paragraphs XII, XIV and XV of the petition, the Commission admits the quotations from its report

therein contained, but refers the Court to Exhibit B of the petition for a more full and complete statement of the contents of said report than is contained in said paragraphs.

VIII

Answering paragraph XIII of the petition, the Commission respectfully refers the Court to its report and order dated March 18, 1943, referred to in the petition and made a part thereof, as Exhibit B, for a more full and complete statement as to the contents of said report and order than is contained in said paragraph.

IX

Answering paragraph XVI of the petition, the Commission denies that there was "testimony" that the direct routes requires a longer time to operate than the back-haul routes of the Pennsylvania. The report, Exhibit B, recites testimony to the effect that the direct routes prescribed by the Commission require from 2 to 4 days less time than the back-haul route of the Pennsylvania.

X

Answering paragraph XVII of the petition, the Commission denies the allegations thereof.

XI

Answering paragraph XVIII of the petition, the Commission denies that it failed to find in accordance with the [fol. 70] facts that neither York nor Fulton Junction would be as satisfactory as interchange points between the Western Maryland and the Pennsylvania as Hagerstown, and alleges that no such routing was at issue before the Commission. The plant of complainant before the Commission is located upon the tracks of the Western Maryland at Hagerstown. The routes requested, and the routes ordered by the Commission permit the Western Maryland to retain the traffic on its rails to the junctions with the Pennsylvania at York and at Fulton Junction, which are the natural routes now observed on traffic to points on other railroads than the Pennsylvania, and are the routes desired by the Western Maryland, which railroad is not opposing the Commission's order.

XII

Answering paragraph XIX of the petition, the Commission denies that no issue was presented in the complaint before it as to the refusal of the Pennsylvania to interchange traffic with the Western Maryland at York and Fulton Junction. In describing the routes desired, the complaint specified that said routes east of Hagerstown shall be as follows: "thence Western Maryland Railway Company to York, Pa., or Fulton Junction, Md., and the Pennsylvania Railroad Company to destinations on its lines east of York and Fulton Junction." Moreover, the above request in the complaint was supported by the testimony before the Commission showing that the only route via the Pennsylvania open to complainant under the published tariffs was the back-haul route via Harrisburg.

XIII

Answering paragraph XX of the petition, the Commission denies that the railroads petitioners gave evidence of comparative costs over the proposed routes and over existing routes for the transportation of the commodities shipped by complainant before the Commission, or that any formula was ever prepared by the Commission for determining the cost of transporting the shipments of said complainant, or any other commodity or commodities. Said alleged cost evidence only purports to be a comparison of the average system costs of each railroad for handling all traffic, including very low grade traffic and very high grade traffic. The purported average costs shown bear no relation whatever to the traffic here involved and the Commission so found from all the facts of record.

XIV

Answering paragraph XXI of the petition, the Commission denies that it made no finding that the existing Pennsylvania round-about route was not adequate, or that the prescribed routes are needed to provide adequate transportation. The finding of the Commission is:

"That the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, is evidenced by the fact that, in order to meet the demands of customers for prompt delivery,

complainant shipped 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction thence by truck to points on the Del-Mar-Va. peninsula. The fact that the proposed routes would be more economical to the shipper is shown by the fact that the saving in transportation charges would be 4.5 cents per 100 pounds on all grain and grain products moving over those routes and transited at Hagerstown, as compared with the charges over routes of the Pennsylvania via Enola yard heretofore described."

Based upon the facts of record, the finding of the Commission was "we conclude that the routes sought are necessary and desirable in the public-interest."

[fol. 72]

XV

Answering paragraph XXII of the petition, the Commission denies that it made no finding that the routes which it has prescribed are more efficient or more economic from the standpoint of railroad transportation. The Commission found that the routes it prescribes "would not result in any cross-hauling or wasteful transportation but they would eliminate a 149-mile out of line haul and two switching interchanges at Hagerstown and would relieve the Pennsylvania from the expense of maintaining transit and absorbing switching charges at Hagerstown."

The Commission further denies that the finding that the routes prescribed are needed to provide more efficient and more economical transportation is not supported by substantial evidence.

XVI

Answering paragraph XXIII of the petition, the Commission admits that the quotations contained in said paragraph are correct excerpts from its report of March 18, 1943, attached to and made a part of the petition as Exhibit B, but for more full and complete information concerning its findings as contained in said report, the Commission respectfully refers the court to said Exhibit B.

XVII

Answering paragraph XXIV of the petition, the Commission admits that the petitioners herein did not consent to the order of March 18, 1943, entered by the Commission.

In this connection the Commission alleges that the administration of Section 15(4) of the Act empowers it to enter orders under that section, irrespective of whether the petitioners consent, upon a finding by the Commission that the routes ordered are "needed in order to provide adequate and more efficient or more economic transportation." The [fol. 73] Commission further alleges that in this case it made such finding. The Commission denies that the effect of its order is to require an originating railroad to "short-haul" itself in violation of the provisions of Section 15(4), but on the contrary the Commission alleges that its order and report in this case is a correct construction of the provisions of the Act.

XVIII

Answering the allegations of paragraphs XXV to XLI, inclusive, of the petition, the Commission denies that its order of March 18, 1943, is void or beyond its authority for the reasons set forth in said paragraphs, or for any other reason or reasons.

XIX

Answering the allegations of paragraph XLII of the petition, the Commission admits that said petitioners will incur penalties if they refuse to obey the order of the Commission.

XX

Further answering the allegations of the petition, the Commission admits and alleges that it made and entered the report and order dated March 18, 1943 (255 I. C. C. 333), referred to in paragraph V of the petition and made a part thereof as Exhibit B, in proceedings then pending before it entitled Docket No. 28647, following complaint filed with it on April 9, 1941, by D. A. Stickell and Sons, Inc., as alleged in paragraph IV of the petition; that full hearings were had and thereafter the Commission made and entered and served upon all parties to said proceeding its said report of March 18, 1943. The Commission further alleges that in said Docket No. 28647, the rail defendants petitioned [fol. 74] for reconsideration and reargument of said report and order of March 18, 1943, which petition was denied by the Commission on October 4, 1943. The Commission admits and alleges that in said proceedings the parties thereto, including the petitioners herein, were, and that each of them

was, accorded the full hearing provided for by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon the matters covered in said report and order were submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of petitioners herein by their counsel; that at said hearings and subsequently, both orally and in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by petitioners in this suit, whereupon the Commission determined said matters and entered and served upon all the parties to said proceedings, including the petitioners herein, its said report and order of March 18, 1943, 255 I. C. C. 333, annexed to and made part of the petition as Exhibit B; that said report and order included the Commission's findings of fact, conclusions and requirements in the premises, and that, upon the evidence as aforesaid, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which its order of March 18, 1943, was based.

The Commission further alleges that the findings and conclusions of said report were and are, and that each of them was and is fully supported and justified by the evidence submitted in said proceedings as aforesaid.

[fol. 75] The Commission further alleges that in making said report, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to said proceedings by their respective counsel, including many of the matters covered by the allegations of the petition herein.

The Commission further alleges that said report and order of March 18, 1943, were not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support them; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in the petition. The Commission denies that its said orders are unreasonable, arbitrary, unlawful, or null and void for any of the reasons set forth in said petition, or for any other reason or reasons. The Commission denies that its said

order causes, or will cause, petitioners either irreparable damage or any damage if said orders are not enjoined.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report and order referred to and made a part of the petition as Exhibit B, which report and order is hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said petition be dismissed.

Interstate Commerce Commission, by E. M. Reidy,
Assistant Chief Counsel. Daniel W. Knowlton,
Chief Counsel, of Counsel.

[fol. 76] *Duly sworn to by J. Haden Alldredge. Jurat omitted in printing.*

Service of a copy of this Answer of the Interstate Commerce Commission acknowledged this 17th day of December, 1943.

Joseph F. Eshelman, Francis R. Cross, Wm. Pepper
Constable, Attorneys for Petitioners.

[fol. 77] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER REQUIRING RESPONDENT TO SHOW CAUSE WHY APPLICATION FOR INTERLOCUTORY INJUNCTION SHOULD NOT ISSUE—Filed 27th December 1943

Whereas, the above entitled action is pending for an interlocutory injunction and for a final decree to enjoin, set aside, annul, and suspend the order of the Interstate Commerce Commission of March 18, 1943, entered in its Docket No. 28647, D. A. Stickell & Sons, Inc. v. The Alton Railroad Company et al., and made to become effective on June 28, 1943, on 30 days' notice, thereby requiring the filing and posting of tariffs in compliance therewith not later than 30 days prior to said effective date, which effective date by subsequent orders of the said Commission was postponed until March 17, 1944, upon like notice; and

Whereas, a verified petition praying for an interlocutory injunction and for a final decree enjoining, setting aside, annulling, and suspending the aforesaid order of the Interstate Commerce Commission and permanently enjoining the enforcement of said order has been duly filed with the Clerk of this Court; and

Whereas, it is made to appear from said verified petition that the petitioners may be entitled to the interlocutory injunction and final decree therein prayed for, it is

Ordered that the respondent herein, the United States of America, appear before the undersigned and two other Judges at least one of whom being a United States Circuit Judge, said judges having been called by the undersigned [fol. 78] to his assistance to hear and determine said petition in accordance with the provisions of an Act of Congress of October 22, 1913 (38 Stat. 220; Title 28 U. S. Code, Sec. 47) at the United States Court House in Baltimore, Maryland, on January 26th, 1944, at 10 o'clock, a. m., of that day or as soon thereafter as counsel can be heard, and then and there show cause before said Court and Judges so convoked or so called together why the aforesaid application for an interlocutory injunction should not issue; and it is further

Ordered that a copy of this order and the verified petition be served forthwith upon the Attorney General of the United States and on the Interstate Commerce Commission by registered mail or by personal delivery and upon the United States Attorney or Assistant United States Attorney at Baltimore, Md., not later than five days before the day herein set for said hearing.

Dated: December 27th, 1943.

William C. Coleman, United States District Judge.

[fol. 79] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONVENING THREE JUDGE STATUTORY COURT—Filed
December 27, 1943

This cause coming on for hearing on application for an interlocutory injunction and a permanent injunction and in accordance with the provisions of the Act of Congress of

October 22, 1913 (38 Stat. 220; Title 28 U. S. Code, Sec. 47), it is

Ordered, that the following judges be called to my assistance to hear and determine said application for an interlocutory injunction and for permanent injunction: United States Circuit Judge Morris A. Soper, and United States District Judge W. Calvin Chesnut, and that the time and place shall be the District Court of the United States for the District of Maryland, at Baltimore, Md., at 10 A. M. Eastern War Time, on the 26th day of January, 1944.

Dated: December 27th, 1943.

William C. Coleman, United States District Judge.

[fols. 80-82] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION OF D. A. STICKELL & SONS, INC., FOR LEAVE TO INTERVENE—Filed December 31, 1943

D. A. Stickell & Sons, Inc., a Maryland corporation, moves the Court for leave to intervene in the above entitled cause and to become an intervener therein, in order to protect rights involved in said proceeding, file answer to the petition of the petitioners therein, produce and cross-examine witnesses, file brief, and be heard at the argument by counsel; and for reasons why applicants are entitled to intervene, applicant states that it was a party to the proceeding before the Interstate Commerce Commission, *D. A. Stickell & Sons, Inc., complainant vs. The Alton Railroad Company, et al., defendants*, I. C. C. Docket No. 28647, in which proceeding said Commission entered the order here at issue.

It is provided in Sections 212 and 213 of the Judicial Code approved March 3, 1911, that any party in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by counsel in any suit wherein is involved the validity of such order.

C. R. Hillyer, Attorney for Applicant for Intervention Named Herein, Field Building, Chicago, Illinois, November 16, 1943. Charles F. Wagaman, Attorney for Applicant for Intervention Named Herein, Hagerstown Trust Bldg., Hagerstown, Md.

[fol. 82] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO D. A. STICKELL & SONS INC. TO
INTERVENE—December 31, 1943

This cause coming on to be heard upon motion of D. A. Stickell & Sons, Inc., a Maryland corporation,

It is hereby ordered, adjudged and decreed that the Motion to Intervene be granted, and that D. A. Stickell & Sons, Inc., a Maryland corporation, be permitted to intervene in this cause and file its Answer herein;

It is further ordered, adjudged and decreed that the Intervenor, D. A. Stickell & Sons, Inc., a Maryland corporation, plead or answer in this cause on or before January 15, 1944.

Enter: William C. Coleman, Judge.

Dated: December 31st, 1943.

[fol. 83] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—Filed December 31, 1943

Now comes the United States of America, defendant herein, and in answer to the petition says:

1. Admits the allegations of paragraphs I through V of the petition except that it denies that this suit is brought under the general equity jurisdiction of this Court as alleged in paragraph III.

2. Admits the allegations of paragraph VI except that it alleges that the effective date of the Commission's order has now been extended to March 17, 1944.

3. Admits the allegations of paragraphs VII through XV but refers the Court to the report of the Commission attached to the petition as Exhibit B for a more complete statement concerning the matters referred to in these paragraphs.

4. Admits that the evidence described in paragraph XVI was offered by a railroad witness but denies that this evidence was "uncontrolled" or uncontroverted. For further answer alleges that the Commission's report recites that complainant offered testimony that the direct routes prescribed by the Commission required from two to four days [fol. 84] less time than the back-haul route of the Pennsylvania. Admits that the Commission did not find in accordance with the railroad evidence but alleges that the Commission found the railroad evidence not controlling after weighing all the evidence in the record, and not merely for the reason stated in paragraph XVI. For further answer alleges that it is the province of the Commission and not of the courts to weigh the evidence.

5. Denies the allegations of paragraph XVII of the petition.

6. In answer to paragraphs XVIII and XIX of the petition this defendant refers the Court to the following statement made by the Commission in its report, which statement refers to the matters described in these paragraphs of the petition:

The Pennsylvania interchanges traffic with the Western Maryland at York and Fulton Junction only once every 24 hours. Consequently, the interchange tracks at those junctions are now used to near, and sometimes to full, capacity. The limited facilities and operating difficulties encountered at or near those plants are described in considerable detail. The evidence does not show, however, that those conditions are any more difficult than operating difficulties encountered at Hagerstown.

It is the duty of carriers to afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines. That requirement of section 3 (3) by necessary implication means that such interchange facilities must be adequate to handle all traffic that may reasonably be expected to require interchange at such point. It is no defense to a complaint seeking through routes necessary and desirable in the public interest to show that a carrier has failed to perform its duty to establish such facilities and that by reason of that neglect of

duty it is more convenient from an operating standpoint for it to haul traffic 149 miles out of line.

For further answer alleges that it is apparent from this statement that the Commission referred to section 3(3) [renumbered section 3(4) by the Transportation Act of 1940] merely in disposing of the defense interjected by the Pennsylvania Railroad that its interchanged facilities at York and Fulton Junction were inadequate. For further answer admits that while the complaint does not specifically [fol. 85] refer to section 3(4) of the Interstate Commerce Act, alleges that the Commission is nevertheless under an obligation to enforce of its own motion all applicable provisions of the Act in any particular situation. For further answer alleges that the Commission properly construed section 15(4) of the Interstate Commerce Act as allowing the establishment of a through route which would short-haul a carrier where it would result in the provision of adequate and more efficient or more economic transportation from the shipper's standpoint, irrespective of whether it would result in more efficient or more economical transportation from the standpoint of railroad transportation or operation. Consequently the evidence referred to in these paragraphs, which relates only to the efficiency of railroad operation, was completely immaterial so far as the issues in the present case were concerned.

7. In answer to paragraph XX of the petition, denies that the railroads gave evidence of comparative costs over the proposed routes and over existing routes for the transportation of the commodities shipped by complainant before the Commission or that any formula was ever prepared by the Commission for determining the cost of transporting shipments of said complainant or any other commodity or commodities. Said alleged cost evidence only purports to be a comparison of the average system costs of each railroad for handling all traffic, including very low grade traffic and very high grade traffic. The purported average costs shown bear no relation whatever to the traffic here involved and the Commission so found from all the facts of record. For further answer alleges that in view of the Commission's construction of section 15 (4) of the Act, referred to in the preceding paragraph of this answer, this evidence, which at most relates only to the efficiency and

economy of railroad operation, was completely immaterial [fol. 86] so far as the issues in the present case were concerned.

8. Answering paragraph XXI of the petition, denies that the Commission made no finding that the existing Pennsylvania back-haul route was not adequate, or that the prescribed routes are needed to provide adequate transportation. The pertinent finding of the Commission is as follows:

That the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, is evidenced by the fact that, in order to meet the demands of customers for prompt delivery, complainant shipped 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction thence by truck to points on the Del-Mar-Va peninsula. The fact that the proposed routes would be more economical to the shipper is shown by the fact that the saving in transportation charges would be 4.5 cents per 100 pounds on all grain and grain products moving over those routes and transited at Hagerstown, as compared with the charges over routes of the Pennsylvania via Enola yard heretofore described.

9. In answer to paragraph XXII of the petition, alleges that under section 15(4), as the Commission properly construed it, no finding was necessary that the routes which the Commission prescribed would be more efficient or more economic from the standpoint of railroad transportation or operation in view of the finding that the prescribed routes were necessary to provide adequate and more efficient and more economical transportation from the shipper's standpoint. Denies that the latter finding is not supported by substantial evidence. For further answer alleges that even with respect to the efficiency and economy of railroad operation, the Commission found that the prescribed routes "would not result in any cross-hauling or wasteful transportation but * * * would eliminate a 149-mile out-of-line haul and two switching interchanges at Hagerstown and would relieve the Pennsylvania from the expense of maintaining transit and absorbing switching charges at Hagerstown."

[fol. 87] 10. Admits the allegations of paragraph XXIII of the petition but refers the Court to the report of the Commission for a more complete statement concerning its findings.

11. Answering paragraphs XXIV of the petition defendant admits that the petitioners herein did not consent to the order of March 18, 1943 entered by the Commission. In this connection alleges that section 15(4) of the Act empowers the Commission to enter orders under that section irrespective of whether the railroads consent, upon a finding by the Commission that the routes ordered are "needed in order to provide adequate and more efficient or more economic transportation." For further answer alleges that the Commission has herein properly construed the quoted language as referring to adequate, more efficient and more economic transportation from the shipper's standpoint. The Commission's report contains adequate findings to bring the present case within this exception of the statute as so construed. For further answer denies that the effect of the Commission's order is to require any railroad to "short-haul" itself in violation of the provisions of section 15(4), as alleged in these paragraphs, but, on the contrary, alleges that this order and report represent a correct construction of the provisions of the Act.

12. Answering the allegations of paragraphs XXXIV through XLI of the petition, denies that the Commission's order is void or beyond its authority for the reasons set forth in said paragraphs or for any other reasons.

13. In answer to paragraph XLII of the petition, admits that the carriers will suffer penalties if they do not abide by the Commission's order. Denies that any of the plaintiff railroads except the Pennsylvania Railroad will suffer any injury or damage from this order. Denies that the [fol. 88] injury to the Pennsylvania Railroad which may result from this order is in any respect unlawful.

Wherefore, it is respectfully prayed that the petition be dismissed.

Robert L. Pierce, Special Assistant to the Attorney General, Department of Justice, Washington, D. C., Counsel for the United States of America; Wendell Berge, Assistant Attorney General; Bernard J. Flynn, United States Attorney.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the above answer upon each of the following counsel this 30th day of December, 1943 by mailing them a copy thereof:

Edward M. Reidy, Esquire, Assistant Chief Counsel,
Interstate Commerce Commission, Washington 25,
D. C.;

C. R. Hillyer, Esquire, 1960 Field Building, 135 South
LaSalle Street, Chicago 3, Illinois;

William Pepper Constable, Esquire, 1000 Maryland
Trust Building, Baltimore 2, Maryland;

Francis R. Cross, Esquire, Baltimore and Ohio Build-
ing Baltimore, Maryland;

Joseph F. Eshelman, Esquire, Broad Street Station
Building, Philadelphia 4, Pennsylvania.

Robert L. Pierce, Special Assistant to the Attorney
General.

[fol. 89] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERVENOR, D. A. STICKELL & SON, INC.—Filed
January 7, 1944

The Intervener, D. A. Stickell & Sons, Inc., in the above
entitled suit, hereinafter called the "Intervener," saving
and reserving to itself all benefit and advantage of excep-
tion to the many errors and insufficiencies in the plaintiffs'
petition, for answer thereunto, answers and says:

I

Answering Paragraph 1 of this petition. This Inter-
vener admits the allegations therein contained as to the
status of petitioners.

II

Answering paragraph 2 of this petition, this Intervener
admits that the petitioners are common carriers of prop-
erty by railroad, subject to the Interstate Commerce Act.

III

Answering paragraph 3 of this petition, this Intervener
admits that this suit is brought under the provisions of Acts

of Congress there enumerated; but Intervener is not advised of the amount in controversy as to each petitioner. Intervener denies that this suit is brought under the general equity jurisdiction of this Court.

[fol. 90]

IV

Answering paragraph 4 of this petition, Intervener admits that the venue of this suit is laid in the District of Maryland under Title 28, U. S. Code, Section 43.

V

Answering paragraph 5 of said petition, Intervener admits that it sets forth the history of the proceedings in said cause before the Commission and also admits the entry of the report and orders by the Commission therein enumerated.

VI

Answering paragraph 6 of said petition, Intervener admits the further statement of proceedings before the Commission, including the petition for re-argument and reconsideration the further orders of the Commission culminating in the final effective date March 17, 1943.

VII

Answering paragraph 7 of said petition, Intervener admits that the complaint before the Commission invoked the Commission's power under Section 15 of the Act, Title 49 U. S. Code, Sec. 15, to require the establishment of through routes and joint rates on grain, grain products, and grain by-products from points of origin in the States of Ohio, Indiana, Illinois, Wisconsin, Iowa, Minnesota, and Missouri, and from Omaha, Nebraska, to Hagerstown, Md., for mixture at that point into livestock and poultry food, and for reshipment thence to destinations on the lines of The Pennsylvania Railroad Company, east of York, Pa., and Fulton Junction (Baltimore) Md., and between New York, N. Y., and Cape Charles, Va., inclusive, and particularly to destinations in the so-called Del-Mar-Va peninsula, herein termed the Peninsula, the latter being that part of Delaware, Maryland, and Virginia south of Wilmington, Del., and between the Chesapeake and Delaware Bays.

[fol. 91]

VIII

Answering paragraph 8 of said petition, Intervener admits that it manufactures livestock and poultry feed at Hagerstown; that its raw materials consisting largely of grain and grain products originate west of Hagerstown, and that the consumers of its products are located east of Hagerstown, a considerable portion of them being located upon the Del-Mar-Va Peninsula described in the petition. Intervener alleges that the shortest and most direct and economical routes from the origins of the raw materials to the points of consumption via Hagerstown are the two routes ordered by the Commission herein.

IX

Answering paragraph 9 of said petition, Intervener admits that the rates of transportation apply as stated in said paragraph.

X

Answering paragraph 10 of said petition, Intervener admits that the transit arrangements are maintained in the tariffs of petitioners; that out-of-line hauls of 149 and 48 miles exist on the routes of the Pennsylvania and Baltimore & Ohio Railroads, respectively, for which back-haul charges are assessed under the tariffs, in addition to the joint through rates. Intervener alleges that out-of-line hauls and back-haul charges do not exist on the direct and more economical routes prescribed by the Commission in its report and orders herein. Intervener admits that the Pennsylvania also assesses an additional transit charge; that the plant of Intervener is on the tracks of the Western Maryland Railroad and the Pennsylvania absorbs switching charges as is the usual custom.

XI

Answering paragraph 11 of said petition, Intervener admits that it does not question the reasonableness of the [fol. 92] Pennsylvania's charge for out-of-line service on its round-about route. Intervener alleges that there is no out-of-line service or back-haul charge therefor upon the direct and economical routes prescribed by the Commission.

XII

Answering paragraph 12 of said petition, Intervener admits that the decision of the Commission named the distances over the present and proposed routes as there stated. It is alleged that the distance via the present Pennsylvania back-haul route via Hagerstown is 1,051 miles, and the distances over the direct and economical routes prescribed by the Commission herein are 938 miles via one Commission route and 958 miles by the other Commission route. In addition to the quotation from the report of the Commission contained in paragraph 12 of said petition, the Commission further compares the efficiency of the routes prescribed with the inefficiency of the present route, as follows:

“Complainant does not question the adequacy, efficiency, or economy of the Pennsylvania service over its direct routes but only over its route via Hagerstown. As to the latter, it contends the routes sought would be more adequate, efficient, and economic from the shippers’ standpoint. Based on the fact that the out-of-line and interchange service at Hagerstown would be eliminated, on the fact that a car leaving Hagerstown via the Western Maryland late in the morning arrives at Elsmere Junction (Wilmington) on the Reading the next morning, and on information received from the Western Maryland, complainant estimates that it would save 2 days in reaching destinations in the Del-Mar-Va Peninsula if the routes sought were established. Its experience shows that it takes 1 day each way between Harrisburg and Hagerstown and 1 day for each interchange between the Western Maryland and Pennsylvania at Hagerstown, making a total of 4 days required for the out-of-[fol. 93] line service, and that it takes an average of 3 to 4 days for the movement of a car from its plant to destinations on the Del-Mar-Va peninsula.”

XIII

Answering paragraph 13 of said petition, Intervener admits that the Commission decided that the two routes sought by complainant were necessary and desirable in the public interest and are “needed in order to provide adequate and more efficient or adequate and more economic transportation.” (Section 15 (4) of the Act). Said para-

graph of the petition does not continue the quotation from the Act which states:

“Provided, however, That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic.”

In view of the above proviso to the Act, it is alleged that via the Commission-prescribed routes the railroads which originate the traffic are not the Pennsylvania, and that said railroads therefore under the statute are entitled to retain the traffic as the Commission finds.

XIV

Answering paragraph 14 of said petition, Intervener admits that the report of the Commission contains the description of the present back-haul route of the Pennsylvania there quoted. Said quotation, however, stops short and does not continue the quotation from the report immediately following where the Commission sets forth the inadequacy and inefficiency of the present back-haul route of the Pennsylvania when compared with the direct and efficient routes prescribed by the Commission. It will be unnecessary to quote the report here as it is already contained in the answer to paragraph 12 of the petition.

[fol. 94]

XV

Answering Paragraph 15 of said petition, Intervener alleges that the direct route of the Pennsylvania there referred to, passes 73 miles to the north of Hagerstown and, therefore, is of no use or concern to Intervener.

XVI

Answering paragraph 16 of said petition, Intervener denies that there was “uncontrolled testimony” that the direct routes require a longer time to operate than the back-haul routes of the Pennsylvania. The report, Exhibit B, recites the testimony to the effect that the direct routes prescribed by the Commission require from 2 to 4 days less time than the back-haul route of the Pennsylvania.

This part of the report is quoted hereinbefore in the answer to paragraph 12.

XVII

Answering paragraph 17 of said petition, Intervener denies that the uncontroverted evidence showed that the routes from Hagerstown to Milford, N. J. and Chatham, Pa. would necessarily be via Fulton Junction and the junctions shown in the petition. Intervener alleges that the direct route shown of record from Hagerstown to Milford and Chatham is through York, Lancaster and Pomeroy which it is alleged is a reasonably straight route.

XVIII

Answering paragraph 18 of said petition, Intervener denies that the Commission failed to find in accordance with the facts that neither York nor Fulton Junction would be as satisfactory as interchange points between the Western Maryland and the Pennsylvania as Hagerstown, and alleges that no such routing was at issue before the Commission. The plant of Intervener is located upon the tracks of the Western Maryland at Hagerstown. The routes requested, and the routes ordered by the Commission [fol. 95] permit the Western Maryland to retain the traffic on its rails to the junctions with the Pennsylvania at York and at Fulton Junction, which are the natural routes now observed on traffic to points on other railroads than the Pennsylvania, and are the routes desired by the Western Maryland which railroad is not opposing the Commission's order.

XIX

Answering paragraph 19 of said petition, Intervener denies that no issue is presented in its complaint as to the refusal of the Pennsylvania to interchange traffic with the Western Maryland at York and Fulton Junction. In describing the routes desired, the complaint specifies that said routes east of Hagerstown shall be as follows: "thence Western Maryland Railway Company to York, Pa., or Fulton Junction, Md., and the Pennsylvania Railroad Company to destinations on its lines east of York and Fulton Junction." Moreover, the above request in the complaint was supported by the testimony of complainant before this Commission showing that the only route via the Pennsylv-

vania open to complainant under the published tariffs was the back-haul route via Harrisburg.

XX

Answering paragraph 20 of said petition, Intervener denies that railroads petitioners gave evidence of comparative costs over the proposed routes and over existing routes for the transportation of the commodities shipped by Intervener, or that any formula was ever prepared by the Commission for determining the cost of transporting the shipments of Intervener, or any other commodity or commodities. Said alleged cost evidence only purports to be a comparison of the average system costs of each railroad for handling all traffic, including very low grade traffic [fol. 96] and very high grade traffic. The purported average costs shown bear no relation whatever to the traffic here involved and the Commission so found from all the facts of record.

XXI

Answering paragraph 21 of said petition, Intervener denies that the Commission made no finding that the existing Pennsylvania round-about route was not adequate, or that the prescribed routes are needed to provide adequate transportation. The finding of the Commission is:

"That the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, is evidenced by the fact that, in order to meet the demands of customers for prompt delivery, complainant shipped 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction thence by truck to points on the Del-Mar-Va peninsula. The fact that the proposed routes would be more economical to the shipper is shown by the fact that the saving in transportation charges would be 4.5 cents per 100 pounds on all grain and grain products moving over those routes and transited at Hagerstown, as compared with the charges over routes of the Pennsylvania via Enola yard heretofore described."

Based in part upon the above facts of record, the finding of the Commission is "we conclude that the routes sought are necessary and desirable in the public interest."

XXII

Answering paragraph 22 of said petition, Intervener denies that the Commission made no finding that the routes which it has prescribed are more efficient or more economic from the standpoint of railroad transportation. The Commission finds that the routes it prescribes "would not result in any cross-hauling or wasteful transportation but they would eliminate a 149-mile out of line haul and two switching interchanges at Hagerstown and would relieve the [fol. 97] Pennsylvania from the expense of maintaining transit and absorbing switching charges at Hagerstown."

Intervener further denies that the finding that the routes prescribed are needed to provide more efficient and more economical transportation is not supported by substantial evidence. The answer to paragraph 12 hereinbefore contains the Commission's summary of some of the evidence showing that the present route is so circuitous that the time of operation is from 2 to 4 days longer than the efficient routes prescribed by the Commission. The report of the Commission states:

"Yet the Pennsylvania, while contending that from the standpoint of operating conditions and operating costs its routes via Enola yard and Hagerstown are more efficient and economical than other routes via Hagerstown, inconsistently contends and introduced considerable evidence to show that its 4.5-cent out-of-line charge, approximately 17 percent of the prescribed rate from Chicago to Salisbury, in addition to the through rates is justified by the out-of-line haul. The justification for a special charge for out-of-line hauls is that routes that require such additional services are not comparable with and are less economical than routes that do not." It is alleged, therefore, that the petition rests upon a misapprehension of the facts of record and the finding of the Commission based upon said facts.

XXIII

Answering paragraph 23 of said petition, Intervener admits that the quotations given from the Commission's report recite certain facts showing that the two routes prescribed by the Commission are necessary and desirable in the public interest. Intervener denies that said finding is based along upon said facts. Intervener has pointed out

[fol. 98] hereinbefore many other facts of record recited in the report that also support said finding, which is based upon the entire record offered before the Commission by both the petitioners and the intervener.

XXIV

Answering paragraph 24 of said petition, Intervener admits that petitioners did not consent to the order entered by the Commission. The administration of Section 15(4) of the Act empowers the Commission to enter its orders, irrespective of whether the petitioners consent, upon a finding by the Commission that the routes ordered are "needed in order to provide adequate and more efficient or more economic transportation." The Intervener further alleges that in this case it made such finding. The Intervener denies that the effect of its order is to require an originating railroad to "short-haul" itself in violation of the provisions of Section 15(4), but on the contrary the Intervener alleges that its order and report in this case is a correct construction of the provisions of the Act.

XXV

Answering paragraph 25 of said petition, Intervener denies that the Commission did not make a finding that the prescribed routes are "needed in order to provide adequate and more efficient or more economic transportation. It is alleged that such finding was duly made by the Commission in the exercise of its statutory discretion upon the facts of record, as shown in the report of the Commission, Exhibit B to petition.

[fol. 99]

XXVI

Answering paragraph 26 of said petition, Intervener denies that the order of March 18, 1943 was beyond the statutory power of the Commission because it requires the petitioners, without their consent, to participate in the new through routes. Intervener refers to the Amended Section 15(4) of the Act which specifically empowers the Commission to enter said order in the exercise of its discretion. Intervener has hereinbefore shown that the Commission specifically found that the prescribed direct, shorter routes will be more efficient or more economic for both the peti-

tioners and the intervener than the existing round-about, back-haul route which requires an addition to the rate to compensate for the unneeded and unwanted service entailed upon the present route.

XXVII

Answering paragraph 27 of said petition, Intervener denies that the Commission failed to consider whether the prescribed routes will be more efficient or economic of railroad operation. Its report showing that it gave consideration to this subject is set forth hereinbefore in the answer to paragraph 22.

XXVIII

Answering paragraph 28 of said petition, Intervener denies that the Commission failed to find that the prescribed through routes are "needed in order to provide adequate and more efficient or more economic transportation." The Commission found as follows:

"We find that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation and should be established, subject to the lowest through rates contemporaneously maintained on the same commodities from the same origins to the same destinations over the direct routes of the Pennsylvania, or over routes in which the Pennsylvania is a participating carrier via Enola yard near Harrisburg."

[fol. 100]

XXIX

Answering paragraph 29 of said petition, Intervener denies that the Commission has no power under the statute to enter said order without the consent of petitioners.

XXX

Answering paragraph 30 of said petition, Intervener denies that the Commission entered its order "without regard" to railroad operation. The answer to paragraph 22 shows that the Commission considered advantages to both the railroads and the Intervener in the prescribed routes.

XXXI

Answering paragraph 31 of said petition, Intervener denies that the order of the Commission was entered without having made a finding that the prescribed routes "were needed in order to provide adequate and more efficient and more economic transportation." The finding of the Commission to that effect is set forth under paragraph XXVIII hereinbefore.

XXXII

Answering paragraph 32 of said petition, Intervener denies that the operation of the prescribed direct routes would be less adequate and less efficient or less economic from a railroad standpoint than the round-about, back-haul route of the Pennsylvania. It is alleged that said route is so expensive to operate that an addition of 17 per cent in the rate is demanded to cover the extra unneeded and unwanted service of operation, as pointed out in the decision of the Commission, Exhibit B to said petition.

XXXIII

Answering paragraph 33 of said petition, Intervener denies that the order is arbitrary and without warrant in [fol. 101] law. Intervener denies that the "uncontradicted evidence" shows that the prescribed routes are less efficient and less economic of operation than the existing out-of-line route. It is alleged that said back-haul route requires an addition of 17 per cent to the rates to pay for this unnecessary and unwanted back-haul service, and the repeated switching service involved.

XXXIV

Answering paragraph 34 of said petition, Intervener denies that the findings of this Commission are without support and are contrary to the evidence.

XXXV

Answering paragraph 35 of said petition, Intervener denies that the Commission disregarded the "Uncontroverted evidence" and that, therefore, said findings are in violation of the Fifth Amendment to the Constitution. Said evidence of petitioners, along with the controverting evidence of Intervener, is recited in the report of the Commission, and

upon all the evidence of record the Commission in its discretion administered the terms of the Act applicable to the issues presented.

XXXVI

Answering paragraph 36 of said petition, Intervener denies that the order violates the Fifth Amendment to the Constitution in that it rests upon a violation of Section 3(4) of the Act as to which there was no hearing.

XXXVII

Answering paragraph 37 of said petition, Intervener denies that the Commission disregarded evidence comparing the present and proposed routes, and based its finding on the failure of the petitioners to obey Section 3(4) of the Act requiring railroads to establish equal facilities for interchange of traffic.

[fol. 102]

XXXVIII

Answering paragraph 38 of said petition, Intervener denies that in ordering the route through Fulton Junction the Commission acted "without warrant in law" when it stated that the evidence does not show that the operating conditions at Fulton Junction are any more difficult than at Hagerstown. It is alleged that a comparison of the operating conditions as shown of record supports the Commission's finding on this point. It is alleged that the finding as to the routes ordered is based also upon the fact that the present back-haul route involves an out-of-line service of 149 miles, plus repeated expensive switchings at Harrisburg and Hagerstown, whereas, the direct route through Fulton Junction saves all of this unnecessary, unwanted and unneeded service.

XXXIX

Answering paragraph 39 of said petition, Intervener denies that the order of the Commission is unsupported by evidence showing that the service over the present round-about, back-haul, indirect route is slower than the direct and much shorter routes prescribed by the Commission.

XL

Answering paragraph 40 of said petition, Intervener denies that the order rests upon a comparison between rail routes and truck routes. As quoted in the answer to para-

graph 21, the Commission states that in order to avoid the slower and unsatisfactory service over the present round-about, back-haul route, petitioner had moved 640 carloads by truck in order to get better service. It is alleged that this truck service will be unnecessary when the direct and quicker rail routes prescribed by the Commission are in operation.

[fol. 103]

XLI

Answering paragraph 41 of said petition, Intervener denies that the order rests upon a finding that the Pennsylvania is the only carrier short-hauled.

XLII

Answering paragraph 42 of said petition, Intervener admits that petitioners will incur penalties if they refuse to obey the order of the Commission.

Except as herein expressly admitted, the Intervener denies the truth of each of and all the allegations contained in the petition, in so far as they conflict either with the allegations herein, or with either the statements of conclusions of fact included in said report and order referred to and made a part of the petition as Exhibit B, which report and order is hereby referred to and made a part hereof.

All of which matters and things the Intervener is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said petition be dismissed.

Respectfully submitted, D. A. Stickell & Sons, Inc.,
Intervener, by C. R. Hillyer, 135 South LaSalle
Street, Chicago, (3), Illinois. Wagaman & Waga-
man, Charles F. Wagaman, 2 Court Place, Hagers-
town, Md. Attorneys for Intervener.

January 6th, 1944.

[fol. 104]

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the above answer upon each of the following counsel this 6th day of January, 1944, by mailing them a copy thereof:

Edward M. Reidy, Esquire, Assistant Chief Counsel, Interstate Commerce Commission, Washington 25, D. C.

Robert L. Pierce, Esquire, Special Assistant to the Attorney General, Department of Justice, Washington, D. C.

William Pepper Constable, Esquire, 1000 Maryland Trust Building, Baltimore 2, Maryland.

Francis R. Cross, Esquire, Baltimore and Ohio Building, Baltimore, Maryland.

Joseph F. Eshelmann, Esquire, Broad Street Station Building, Philadelphia 4, Pennsylvania.

Charles F. Wagaman, Wagaman & Wagaman, Attorneys for Intervener.

[fol. 105] IN UNITED STATES DISTRICT COURT

[Title omitted]

Extracts from Stenographer's Notes of Hearing on January 26, 1944

Baltimore, Maryland, January 26, 1944.

The above-entitled cause came on to be heard before their Honors Judges Morris A. Soper, William C. Coleman and W. Calvin Chestnut, on Wednesday, January 26, 1944, at ten o'clock a. m.

APPEARANCES:

On behalf of Petitioners:

Messrs. William Pepper Constable, Francis R. Cross, and Joseph F. Eshelman.

[fol. 106] *Present on behalf of Defendant and Interveners-Defendants:*

Messrs. Edward M. Reidy (Assistant Chief Counsel, Interstate Commerce Commission), Robert L. Pierce (Special Assistant to the Attorney General), C. R. Hillyer, Charles F. Wagaman, and John Wagaman.

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Soper: The case on for trial, gentlemen, is the case of The Pennsylvania Railroad and others against the United States.

What arrangement has been made with reference to the trial of the case? Shall we proceed on the pleadings.

Mr. Eshelman: Your Honor, if agreeable, we should like to introduce the evidence, that is to say, the record before the Interstate Commerce Commission as the record here, as our exhibit, plus only one order which was made by them, at the Court's request, postponing the effective date of this order, so that the matter will appear here as it now stands. And then we were going to proceed to argue, if it is agreeable.

Judge Soper: What was the nature of the order postponing the effective date?

Mr. Eshelman: The order was entered at the request of the Court, and postponed the effective date of this order for 90 days, or until March 17, 1944, on a 30 days notice.

The point was that when we first came before the Court with our petition, why, there was a very little time for the Court to convene and get together, so that at the Court's request the Commission postponed the effective date of this order.

Judge Coleman: With the joint request of the parties?

Mr. Eshelman: We presented that to the Commission.

Judge Coleman: Yes.

Judge Soper: Will that be all of the record?

Mr. Eshelman: Yes, sir.

Judge Soper: On both sides? I assume that neither the Petitioners nor the United States has any further evidence to offer.

Mr. Pierce: That is right, Your Honor.
[fol. 108] I have a map here I would like to introduce. I do not care whether it goes in evidence, or just to hand it up for argument. But I think it would be convenient for the Court to have it before them.

Mr. Eshelman: Perhaps I should have said the same thing. We have produced copies of Exhibit 66 before the Commission, but we have superimposed on that in color the prescribed routes, as compared with the Pennsylvania's existing routes.

Judge Soper: All right, we will be glad to have them, gentlemen.

Have you copies for each of us?

Mr. Eshelman: Yes, sir.

Judge Coleman: Have you a map big enough to put upon the board, so you can refer to it in the course of the argument?

Mr. Eshelman: Well, I think the detail, Judge Coleman, is a little small for that, I tried to find such a map. But I believe it would be better to use maps which you might individually look at.

Judge Soper: Have you two more copies?

[fol. 109] Judge Coleman: Have you another copy?

Mr. Eshelman: Those, Your Honor, are separate copies.

One shows the route from Chicago to Salisbury, Maryland, and the other from St. Louis to Milford, New Jersey, which are taken as identical.

Judge Coleman: You have not, though, in one map, then—the Railroad has not—the lines showing the ordered route and the existing route.

Mr. Eshelman: Yes, Your Honor, those do show the existing route in red, and the ordered routes in the blue and the brown.

Judge Coleman: On each of these maps?

Mr. Eshelman: On each of those. The brown or the blue routes are the so-called Pittsburgh Dispatch route, or routes Nos. 1 and 2 of the New York Central up to—

Judge Coleman: Have you three of those, three copies?

Mr. Eshelman: You may have my copy. Will you pass that up? That is another set. You will see they are different.

[fol. 110] Judge Soper: These are copies of the same thing you have already handed me?

Mr. Eshelman: Yes, sir, it is an additional one.

Judge Soper: You will be able to explain during the course of the argument the different things on these two copies?

Mr. Eshelman: Yes, Your Honor.

Judge Soper: Now, we are ready to proceed with the argument.

The Court does not desire to limit counsel unduly, but it would be convenient if you could give us some idea of how much time the case should require in argument.

Mr. Eshelman: I should think that on our side we ought to conclude within two hours. And it may be that we shall be able to make more speed and shorten it up. But I think that would be an outside figure.

Judge Soper: How does the Government feel about that?

Mr. Pierce: Two hours will certainly be ample for us. I doubt that we will need that.

[fol. 111] Mr. Eshelman: I rather entertain that hope myself.

Judge Soper: Very well. Whether it is a hope or doubt, we will be glad to have it borne in mind.

Mr. Eshelman: First, may I say that there is——

Judge Soper: Just one moment.

Judge Chesnut: Gentlemen, I ought to say this, that in looking over this long list of the parties in this case, I am reminded that I hold, as trustee or as co-trustee, I think it is two bonds of the Pennsylvania Railroad Company, and I think I might have a bond or two of some of these other roads.

Now, that is a matter for counsel to decide, whether they want to disqualify me or not.

Mr. Pierce: We certainly have no objection, Your Honor.

Judge Chesnut: All right.

Mr. Eshelman: May it please the Court, in our petition, on page 11, in paragraph XVI, we have an error which, with the permission of the Court and the consent of counsel, I would like to have corrected.

[fol. 112] The first word of Paragraph XVI is erroneously shown as “uncontrolled” instead of “uncontroverted.”

If this permission is granted, I assume that the Answer of the United States in Paragraph IV, the Answer of the Commission in Paragraph IX, and the Answer of the Stickell Company in Paragraph XVI should likewise conform. Is that agreeable to counsel?

Mr. Reidy: Yes, sir, that is agreeable.

Judge Soper: Will you repeat that correction?

Judge Coleman: Sometimes it is as hard to control testimony as it is controvert it, isn't it? (Laughter)

Mr. Eshelman: The change, Your Honor, is on page 11.

Judge Soper: I get it. “Uncontroverted”. And where does that appear on the other side?

Mr. Eshelman: On the other side, in the Answer of the United States, in paragraph IV, the words “uncontrolled or” should be stricken, and in the Answer of the Commission, in paragraph IX, and the Answer of the Stickell Company, in paragraph XVI, the word “uncontroverted”

[fol. 113] should be substituted for the word "uncontrolled".

Judge Soper: Paragraph IV of whose Answer?

Mr. Eshelman: The United States'.

Judge Soper: And paragraph IX?

Mr. Eshelman: Of the Commission.

Judge Soper: And paragraph XVI of Stickell?

Mr. Eshelman: Paragraph XVI of Stickell, yes, sir.

Judge Soper: Very well. Very good.

OFFERS IN EVIDENCE

Mr. Eshelman: Now, if it please the Court, I should like to introduce the record before the Interstate Commerce Commission. It is offered under two certificates, one covering the transcript of testimony before the Commission and the exhibits before the Commission, and under the other certificate, the balance of the record.

Counsel for the Commission has seen this; and I understand that he agrees it is the entire record before the Commission.

We should like to offer that.

Judge Soper: Very well.

[fol. 114] Mr. Eshelman: In addition, I should like to offer a certified copy of the Commission's order of November 6, 1943, which postpones the effective date of its order in this case until March 17, 1944, on thirty days' notice.

That means that thirty days before March 17th, or on February 16th, we must, unless the Commission's order is enjoined or stayed, and the order postponed by the Commission at the Court's request, we must file these tariffs under pain of severe penalties.

In this connection—

Judge Soper: Does that mean that there must be, in order to avoid this embarrassment, a request by this Court for further postponement of thirty days before the March date, March 17th?

Mr. Eshelman: Yes, with this proviso, that it is my understanding that it is the Commission's practice in these cases further to postpone the effective date of its order, at the Court's request, as may be needful for the Court's opportunity to consider the case before it.

Judge Soper: Well, may it be understood that that [fol. 115] matter will be taken care of?

Of course, this Court will make every endeavor to give a prompt decision. But if it happens that we do not file one by February 16th, then it may be understood that the matter stands in status quo until the decision is reached.

Mr. Reidy: On behalf of the Commission, I will undertake to prepare such an extension order.

Judge Soper: Very good.

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[fol. 116] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MARYLAND

Civil No. 2091

THE PENNSYLVANIA RAILROAD COMPANY, ET AL., Petitioners,

v.

UNITED STATES OF AMERICA, Defendant; INTERSTATE COMMERCE COMMISSION, D. A.; Stickell & Sons, Inc., Interveners-Defendants

Before Soper, United States Circuit Judge, and Coleman and Chesnut, United States District Judges

Argued January 26, 1944

I concur, W. Calvin Chesnut, U. S. District Judge.

I concur, Morris A. Soper, U. S. Circuit Judge.

OPINION—Filed March 2, 1944

COLEMAN, District Judge:

This suit is instituted under Section 17(9) of the Interstate Commerce Act (49 U. S. C. A. Sec. 17(a)) and the provisions of the Act of Congress of October 22, 1913, (c. 32, 38 Stat. 219, 28 U. S. C. A. Secs. 41(28), 43-48), to enjoin the operation and effect of an order of the Interstate Commerce Commission.

This order requires the establishment of certain additional through routes and joint rates and charges applicable thereto, on shipments of grain and grain products, originating at points in States included in what is com-

monly known as Central Territory (defined generally as that territory lying north of the Ohio River, south of the Great Lakes, east of Chicago, St. Louis and Cairo, Illinois, and west of Buffalo and Pittsburgh), and carried to Hagerstown, Maryland. There, the grain and grain products are [fol. 117] allowed to be held over under what is known as a transit privilege, for the purpose of being manufactured into live stock and poultry feed, and then the manufactured product is reshipped to destinations on the lines of the Pennsylvania Railroad east of York, Pennsylvania, and Fulton Junction (Baltimore), and between New York City and Cape Charles, Virginia, inclusive, and more particularly to destination points in Delaware, Maryland and Virginia between the Chesapeake and Delaware Bays, some times called the Del-Mar-Va Peninsula. The Pennsylvania Railroad is the only carrier serving these latter points. The so-called transit privilege allowed at Hagerstown rests, like other transit privileges such as creosoting lumber or fabricating iron and steel, upon the fiction that the incoming and the outgoing transportation services, which are in fact distinct, constitute a continuous shipment of the identical article from point of origin to final destination.

Thirteen carriers affected by this order are the petitioners in the present suit. The defendant is the United States, and interveners-defendants are the Interstate Commerce Commission and D. A. Stickell & Sons, Inc., a Maryland corporation engaged in the milling and mixing of grain, grain products and grain by-products, and in the manufacture of mixed live stock and poultry feed at Hagerstown, Maryland, this company being the original petitioner before the Interstate Commerce Commission on whose complaint the Commission's order here under review was passed.

Independently of the Commission's order, there are, and have been for some time, joint rates in effect on grain and grain products with the so-called transit or mixing privilege at Hagerstown, Maryland and other points, applicable from points of origin in Central Territory, to all points in so-called Trunk Line Territory, which is generally defined as that territory east of Central Territory and west of New England, New York City and Norfolk, Virginia. However, these existing joint rates are restricted by the carriers so that they apply only over certain through routes. For

[fol. 118] example, they do not apply on traffic originating in Central Territory or west thereof, if destined to points on the Pennsylvania Railroad, unless that carrier receives the traffic at or west of Pittsburgh or Buffalo. A similar situation exists with respect to traffic moving over the Baltimore & Ohio Railroad. As a result, these existing through routes of the latter road and of the Pennsylvania, through Hagerstown, embrace out-of-line hauls of 48 and 149 miles, respectively. The Pennsylvania's out-of-line haul is from its Enola Yard, a point on the Susquehanna River opposite Harrisburg to Hagerstown and return, for which out-of-line or back-haul operation, the Pennsylvania charges, in addition to the joint through rate with the transit privilege at Hagerstown (which is $26\frac{1}{2}\text{¢}$ per 100 pounds from Chicago to Salisbury, Maryland, 4.5¢ per 100 pounds, or 90¢ a ton. It will thus be seen that this additional charge is approximately 17% of the through rate.

The Stickell Company does not contest the reasonableness per se of this back-haul charge or of the joint rates, but claims that this extra charge almost completely destroys its margin of profit on the sale of its products. However, Stickell's basic claim is for better transportation service, on the ground that the existing route via Hagerstown over the Pennsylvania as just described, being indirect with an out-of-line back-haul, is inadequate, inefficient and uneconomical, and results in its shipments being unduly delayed in reaching customer consignees, thus placing it at a disadvantage as respects its competitors not located in Hagerstown but who buy their grain and grain products from the same general territory, and ship to the same markets.

Taking Chicago as a representative point of origin and Salisbury, Maryland, as a representative destination point, one of the new routes to and through Hagerstown, Maryland, ordered by the Commission and designated as route 1, embraces the use of the New York Central to Youngstown, Ohio; the Pittsburgh & Lake Erie from there to Connellsville, Pennsylvania; thence by the Western Maryland to York, Pennsylvania; where the Pennsylvania finally [fol. 119] receives the traffic and hauls it to destination. Similarly, new route 2 ordered by the Commission, embraces the use of the Wabash to Toledo, Ohio, the Wheeling & Lake Erie to Pittsburgh Junction, Ohio, the Pittsburgh & West Virginia to Connellsville, Pennsylvania, and

thereafter the haul being the same as by new route 1 ordered by the Commission. However, such routes short-haul the Pennsylvania, that is to say, require it to embrace in such routes substantially less than the entire length of its lines between the termini of such routes. For example, again using Chicago as a representative origin point and Salisbury, Maryland, as a representative destination point, the distance over the direct route of the Pennsylvania alone, is 902 miles, whereas if the Pennsylvania is required to put into effect the new routes ordered by the Commission whereby it would participate in the traffic only from Fulton Junction, Baltimore, or York, Pennsylvania, its haul would be only 155 miles and 114 miles, respectively, or a reduction of 747 and 788 miles, respectively. This, the Pennsylvania contends, the Commission cannot lawfully require it to do without its consent.

No testimony was taken before this Court, the case being presented on the record of the proceedings before the Interstate Commerce Commission.

Under the provisions of Section 15(3) of the Interstate Commerce Act (49 U. S. C. A. Sec. 15(3)), the Interstate Commerce Commission "may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges . . ." Section 15(4) of the Act, as amended by the Transportation Act of 1940 (49 U. S. C. A. Sec. 15(4)), imposes limitations upon this power of the Commission, as follows: "In establishing any such through route the Commission shall not (except as provided in section 3, (not involved here) and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such [fol. 120] route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) *unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic,*

transportation: Provided, however, That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs. In time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest." (*Italics inserted*).

Relying upon clause (b) of Section 15(4) of the Act just quoted, Stickell, in 1941, filed in a complaint with the Commission against a large number of railroads, seeking the establishment of the two additional through routes and joint rates and charges applicable thereto, which we have just described. After due hearing, at which testimony was taken before an examiner of the Commission, he recommended that the relief sought be granted. The matter came on for argument before Division 2 of the Commission, and [fol. 121] on March 18, 1943, that Division rendered its decision, ordering the establishment of the new through routes. *D. A. Stickell & Sons, Inc. v. The Alton Railroad Co.*, 255 I. C. C. 333. Thereupon, the carriers, pursuant to their statutory right, petitioned the entire Commission to review the decision of Division 2, but the Commission, by order of October 4, 1943, denied, without report, the petition for reargument and reconsideration, although by interim and subsequent orders, it modified its order of March 18, 1943, so as to become effective on March 17, 1944, upon thirty days notice. This effective date has been further extended by the Commission, in view of this pending proceeding, to April 17, 1944. As a result of this action, the carriers involved are required to file with the Commission, not later than March 17, 1944, tariffs establishing the joint rates over the prescribed new through routes, to become

effective not later than April 17, 1944, unless the Commission's order is suspended and annulled by this Court. If such is not done, and petitioners fail to obey the Commission, they would be subject to a penalty of \$5,000 for each day each violation thereof continues (49 U. S. C. A. Sec. 16(8)).

The following passages taken from its report embrace the Commission's reasons for its action (255 I. C. C. 341-344): "It is the duty of carriers to afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines. That requirement of section 3(4) by necessary implication means that such interchange facilities must be adequate to handle all traffic that may reasonably be expected to require interchange at such points. It is no defense to a complaint seeking through routes necessary and desirable in the public interest to show that a carrier has failed to perform its duty to establish such facilities and that by reason of that neglect of duty it is more convenient from an operating standpoint for it to haul traffic 149 miles out of line.

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[fol. 122] "Prior to the amendment of section 15 (4), the Commission's power to prescribe through, all-rail, routes which would short haul any carrier participating therein without its consent was limited to instances where the inclusion of the entire length of its railroad between the termini of such route would make the through route unreasonably long as compared with another practicable route which could otherwise be established. While that section limited the powers of the Commission, it left it entirely within the discretion of the carrier as to whether it would insist upon its long haul. It was at liberty to voluntarily join in any route which it believed to be more adequate, efficient, and economical than a route embracing its entire line, although the latter route might not be unreasonably long. Therefore, no exception to the restriction on the Commission's power was necessary to protect carriers' interests.

"As to the shippers, however, a different situation existed. It rests within the power of carriers by insistence on their long hauls to place localities and shippers on the lines of other carriers or not on their direct lines at severe rate

and competitive disadvantages and, as in the instant case, to deprive shippers of relatively equal opportunities to compete in markets served only by them. Carriers in many instances availed themselves of the right to their long haul, and the disadvantaged localities and shippers had no redress. It was to remedy that situation, apparently, that the second exception was added. The Commission was thereby given authority, when it finds that through routes are 'needed in order to provide adequate and more efficient or adequate and more economic transportation,' to require the establishment of such routes although they may short haul one or more of the participating carriers. We interpret that exception to mean adequate and more efficient and more economic from the public's or shippers' as well as the participating carriers' standpoint. That such was the intent of the Congress is evident from the conditions the amendment was apparently designed to correct, from the fact that in the added proviso even the preference to be accorded the originating carrier is made subservient to the public interest, from both limitations on the right of a carrier to retain its long haul, and from the fact that the Congress specifically provided that, as between carriers, 'No through route or joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs.'

"That the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, is evidenced by the fact, that, in order to meet the demands of customers for prompt delivery, complainant shipped 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction thence by truck to points on the Del-Mar-Va peninsula. The fact that the proposed routes would be more economical to the shipper is shown by the fact that the saving in transportation charges would be 4.5 cents per 100 pounds on all grain and grain products moving over those routes and transited at Hagerstown, as compared with the charges over routes of the Pennsylvania via Enola yard heretofore described.

"We find that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation and should be established,

subject to the lowest through rates contemporaneously maintained on the same commodities from the same origin to the same destinations over the direct routes of the Pennsylvania, or over routes in which the Pennsylvania is a participating carrier via Enola yard near Harrisburg."

All parties to the present proceedings concede that clause (a) of Section 15 (4) is not involved, because the existing direct routes are shorter than the proposed routes and the [fol. 124] Commission so found. For example, the distance from Chicago to Salisbury, Maryland, over the direct route of the Pennsylvania is 902 miles, whereas over new route 1 ordered by the Commission, the distance is 946 miles via Fulton Junction (Baltimore), and via York, 958 miles; and over route 2, via Fulton Junction (Baltimore), 938 miles, and via York, 950 miles.

It will thus be seen that two basic questions are presented for decision: First, what is the precise character of the restriction which clause (b) of Section 15 (4) of the Act places upon the Commission's power to order the establishment of new through routes which short-haul a railroad without its consent; and second, has the Commission, in the present case, exceeded the authority granted it by clause (b)?

The Meaning of Clause (b) of Section 15 (4) of the Act

With respect to the interpretation to be given to clause (b) which has not heretofore been construed in any reported court decision, the gist of the carriers' contention is that the Commission is restricted in prescribing through routes to cases where the need is proven for "adequate, and more efficient or more economic" *physical* facilities, instrumentalities and services. That is to say, the carriers contend that the meaning of clause (b) is to make the short-hauling restriction embodied in the initial clauses of Section 15 (4) inapplicable only where existing routes do not provide "adequate, and more efficient or more economic, transportation" in the *operating* sense, that is, as the word "transportation" is defined in Section 1 (3) (a) of the Interstate Commerce Act (49 U. S. C. A. Sec. 1 (3) (a)), which is as follows: "The term 'transportation' as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any

contract, express or implied, for the use thereof, and all [fol. 125] services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported." The carriers contend that the existing through route is not only entirely adequate but is also more efficient and more economic when tested by an operations' criterion.

On the other hand, the shipper and the Commission contend that the only reasonable interpretation of the exception in clause (b) is that it means, as the Commission held in its opinion, "adequate and more efficient and more economic from the public's or shippers' as well as the participating carriers' standpoint." In other words, the shipper and the Commission assert that the switching and terminal services at Harrisburg in breaking up through trains from the west, and in diverting shipments for the backhaul of 148 miles to the Pennsylvania's branch line to Hagerstown which runs southwest from Harrisburg, when the ultimate destination of shipments are points east of Harrisburg; that repetition of the same operations when the shipments are returned from Hagerstown to Harrisburg and are there stopped and switched into eastbound trains for movement to destination; and that also the additional delays and terminal services incident to switching cars from the Pennsylvania to the Western Maryland tracks at Hagerstown, and from the Western Maryland back to the Pennsylvania tracks for the movement north from Hagerstown to Harrisburg, are all factors which the Commission was permitted to take into account in determining whether the new through routes prescribed were "needed in order to provide adequate, and more efficient or more economic, transportation."

In order to determine the true meaning of clause (b) and, therefore, the precise extent of the Commission's power under this clause, it is necessary to review its legislative history. The original Act to Regulate Commerce approved February 4, 1887, 24 Stat. L. 379, 384, gave to the Interstate [fol. 126] Commerce Commission no authority to prescribe through routes and joint rates, that power being first conferred by an amendment to Section 15 of the original Act embraced in the Hepburn Act of June 29, 1906, 34 Stat. L. 584, 590, but this power was limited in that it could only be exercised in case "no reasonable or satisfactory through route exists." By the Mann-Elkins Act of June

18, 1910, 36 Stat. L. 539, 552, this limitation was eliminated, but the first so-called short-haul restriction on the Commission's power was enacted as follows: "and in establishing such through route, the Commission shall not require any company, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established." By the Transportation Act of 1920, 41 Stat. L. 456, 485-486, this provision, as well as the general provision for the establishment of through routes and joint rates, was changed, the short-hauling restriction provision being enacted to read as follows (Section 15 (4)): "In establishing any such through route the Commission shall not . . . require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established: Provided, That in time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission it may . . . establish temporarily such through routes as in its opinion are necessary or [fol. 127] desirable in the public interest."

Following the legislation of 1920, the Commission had numerous occasions to construe clause (4) of Section 15 until the year 1929 and it had frequently, but not uniformly, interpreted that provision as protective only of the originating carrier or of a subsequent carrier only after it had obtained possession of the traffic. See, for example, *Waverly Oil Works Co. v. P. R. R. Co.*, 28 I. C. C. 621, 630-631 (1913); *Flory Milling Co. v. C. N. E. Ry. Co.*, 93 I. C. C. 129, 134 (1924); *Fort Smith S. & R. I. R. E. Co. v. A. & V. Ry. Co.*, 107 I. C. C. 523 (1926); *Routing of Grain*, 147 I. C. C. 782, 784 (1928). However, in 1929, the Supreme Court was called upon to construe clause (4) of

Section 15 in *United States v. Missouri Pacific R. R. Co.*, 278 U. S. 269, commonly known as the Subiaco Case, the complaint having been initiated by the Fort Smith, Subiaco & Rock Island R. R. Co. v. *The Missouri Pacific R. R. Co.*, and a large number of other rail carriers. The Commission made an order establishing through routes for west-bound traffic over the Subiaco. The Missouri Pacific sued to set aside the order, and a District Court, composed of three judges, held that the Commission was without power to establish the routes. 21 F. (2d) 351. The United States, the Commission and the Subiaco appealed and the lower court was affirmed, the Supreme Court holding that the protection granted by Section 15 (4) against short-hauling was not limited to the originating carrier or to a subsequent carrier getting possession of the traffic, but that it operated as a restriction upon the Commission's right to prescribe through routes which would short-haul *any* of the participating carriers.

Prior to this decision, there was pending before the Commission a proceeding instituted by Stickell & Sons, the same shipper that is complainant in the present case, for the establishment of additional through routes and joint rates on grain and grain products via Hagerstown, subject to transit privileges at that point, similar to those required by the Commission's present order here under review. In [fol. 128] 1928, in *Stickell & Sons. v. Western Maryland Railway Co.*, 146 I. C. C. 609, the Commission found the establishment of these through routes and joint rates desirable in the public interest. A further hearing, however, was ordered in that case, but before the Commission made its final report, the Supreme Court rendered its decision in the Subiaco case, *supra*. Thereupon, the Commission, in a second report (153 I. C. C. 759) held that protection of the long hauls of the carriers involved was not shown to result in routes unreasonably long in comparison with those which complainant sought, and therefore, the Commission found that it was without power to require the establishment of additional through routes.

Following this decision, the Commission, in several of its annual reports to Congress, urged an amendment which would overcome this decision, and various bills were introduced in Congress for this purpose. However, no change was made in Section 15 (4) until the passage in 1940 of

the Transportation Act, when the law as it now stands was enacted, embracing clause (b) which we have heretofore quoted and which is the provision here in issue.

So much for the evolution of the clause which we are called upon to interpret. This summary of the various legislative enactments which finally resulted in its adoption may be said still to leave some doubt as to the precise intent that lay behind the adoption by Congress of the phraseology of clause (b). In other words, a mere chronology of the various legislative steps fails to explain just how far Congress intended the Commission might go in invoking clause (b). However, reports of Congressional committees and explanatory statements made by their members in presenting a bill for passage are legitimate aids to the interpretation of a statute if there is any doubt as to the intended meaning of the language employed. *Pennsylvania R. R. Co. v. International Coal Co.*, 230 U. S. 184; *Duplex Printing Press Co. v. Deering*, 254 U. S. 443; *Wisconsin Railroad Commission v. C. B. & Q. R. R. Co.*, 257 U. S. 563; *United States v. Missouri Pacific Railway Co.*, *supra*. See also, *Helvering v. Griffiths*, 318 U. S. 371. Therefore, it is appropriate for us to resort to such inter-[fol. 129] pretative aids in the present case.

First, it is appropriate to note, because not disputed, that the Commission requested of Congress complete authority to fix through routes and joint rates with no limitation other than that there must be proven need for same *in the public interest*. But Congress ultimately refused to go this far. In the bill which finally became the Transportation Act of 1940, 54 Stat. L. 898, and bore Senate number 2009 as first passed by the Senate (76th Cong. 1st Ses.), the short-haul restriction had been entirely eliminated from Section 15 (4). The House amended the bill and reinserted Section 15 (4). Thereupon, clause (b) was written into the bill by the Conference Committee on the disagreeing votes of the two Houses, in the form in which it was finally enacted. The report of the Conference Committee as submitted to the House contains an explanatory statement by Mr. Lea concerning the short-haul provision in which is to be found the following (H. R. Report, No. 2832, 76th Congress, 1st sess. pp. 70-71): "The House amendment made no change in the short-haul provision of section 15 (4) and the exceptions thereto. The Conference substitute in section 10 (b) retains them and includes another excep-

tion by proving that the restriction against short-hauling a rail carrier shall not apply where the Commission finds that the through route proposed to be established is needed in order to provide adequate and more efficient or more economic transportation. The Commission, in the exercise of this additional authority, is directed to give reasonable preference in any particular case to the carrier by railroad which originates the traffic, so far as is consistent with the public interest and subject to the limitations with respect to unreasonably long routes and the necessity of providing adequate and more efficient or more economic transportation. The Commission is prohibited from establishing any through route and joint rates applicable thereto for the purpose of assisting any carrier that would participate therein to meet its financial needs."

[fol. 130] There is little to be derived from other Committee reports which throws any further light upon just what meaning Congress intended to attach to the use of the words "adequate, and more efficient or more economic transportation." The carriers' brief is replete with extensive quotations of statements made by railroad witnesses at hearings which were held before various Congressional committees in connection with a number of independent through route bills which, however, were never enacted. The carriers stress the fact that these witnesses used the words "efficient" and "economic" from a railroad operating standpoint. However, conceding that they did, and apart from any question as to our right to resort to such statements as an aid in interpreting the meaning of a statute (in *Helvering v. Griffiths*, supra, the Supreme Court would appear to indicate, contrary to its earlier decisions, that *any* statement or debate made in Congress relative to a particular bill may be resorted to as an interpretative aid in case of doubt as to its meaning as enacted) we conclude that, with the legislative history and background which we have just reviewed, the better view is that the words employed in clause (b) clearly indicate that Congress must have intended the broad meaning which the Commission has given to these words, rather than the restricted meaning upon which the carriers are insisting.

For example, one of the prerequisites of clause (b) before the new through route may be established is that it is needed in order to provide "adequate transportation". Obviously, Congress could not have been referring to the

carriers by employing these words because it would be meaningless to speak of the railroad itself needing "adequate transportation". On the other hand, it is a truism to say that the shipping public may have need for such. It is true the adjective "adequate" does not stand alone but is coupled with the adjectives "efficient" and "economic", and these adjectives, of course, must reasonably be construed as referring either to the services received by the shipper or to operations from the railroad standpoint, or to both. Since all three adjectives employed qualify [fol. 131] ify the same noun, "transportation", and since, as we have seen, it would not be sensible to say that the noun when qualified by the first of these adjectives was intended to relate to something which the carrier, as opposed to the shipper, needed, it is, therefore, entirely reasonable to say that the other two adjectives must be taken as having been employed for the purpose of qualifying the same noun when used in the latter sense, but also when used in an operating sense because their qualifying of the noun "transportation," unlike the adjective "adequate", is just as meaningful with reference to carriers' as to shippers' needs.

Language somewhat similar to that under discussion is to be found in Section 15 (a) (2) of the Interstate Commerce Act as amended by the Act of June 16, 1933 (48 Stat. 220), as follows: "In the exercise of its power to prescribe just and reasonable rates The Commission shall [fol. 132] *give due consideration*, among other factors • • • *to the need, in the public interest of adequate and efficient railway transportation service* at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service." (Italics inserted). Also, in the further amendment of this Section by the Transportation Act of 1940 (49 U. S. C. A. Sec. 15 (a) (2)), we find the identical language. It will thus be seen that the phraseology now before us is in effect merely an abbreviation of the phraseology which Congress had previously employed in another part of the Interstate Commerce Act as early as 1933. There can be no doubt as to the meaning of the language then and there employed, because it is plain and unambiguous to the effect that the needs of both the shipping public and the carriers must be safeguarded. Thus, it is only

logical to say that when Congress employed similar but somewhat abbreviated language in Section 15 (4) (b), it did so with the same purpose in mind.

Support for this view is found in decisions of the Supreme Court construing the term "public interest" in the Transportation Act of 1920, the Emergency Railroad Transportation Act of 1933, and the Transportation Act of 1940. For example, in *New York Central Securities Co. v. United States*, 287 U. S. 12, in referring to the criterion, "public interest", as used in Section 5 of the Interstate Commerce Act (as amended by the Transportation Act of 1920), whereby consolidations of carriers were permitted when the Commission found them to be in the "public interest", the Court said (pages 24-25): "Appellant insists that the delegation of authority to the Commission is invalid because the stated criterion is uncertain. That criterion is the 'public interest'. It is a mistaken assumption that this is a mere general reference to public welfare without any standard to guide determinations. The purpose of [fol. 133] the Act, the requirements it imposes, and the context of the provision in question show the contrary. Going forward from a policy mainly directed to the prevention of abuses, particularly those arising from excessive or discriminatory rates, Transportation Act, 1920, was designed better to assure adequacy in transportation service. . . . The provisions now before us were among the additions made by Transportation Act, 1920, and the term 'public interest' as thus used is not a concept without ascertainable criteria, but *has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency*, and to appropriate provision and best use of transportation facilities, questions to which the Interstate Commerce Commission has constantly addressed itself in the exercise of the authority conferred." (Italics inserted).

This language has been adopted and quoted in several later decisions of the Supreme Court, relating to carrier consolidations. For example, we find reaffirmance of it in *Texas v. United States*, 292 U. S. 522, 531; in *United States v. Lowden*, 308 U. S. 225, 230, and again, in a very recent decision, *McLean Trucking Co. v. United States*, decided January 17, 1944, where the following is said, (page —): "The national transportation policy is the

product of a long history of trial and error by Congress in attempting to regulate the nation's transportation facilities beginning with the Interstate Commerce Act of 1887. For present purposes it is not necessary to trace the history of those attempts in detail other than to note that the Transportation Act of 1920 marked a sharp change in the policies and objectives embodied in those efforts. 'Thereto-fore, the effort of Congress had been directed mainly to the prevention of abuses; particularly, those arising from excessive or discriminatory rates; 'and emphasis on the preservation of free competition among carriers was part of that effort. The act of 1920 added 'a new and important [fol. 134] object to previous interstate commerce legisla-tion.' It sought 'affirmatively to build up a system of railways prepared to handle promptly the interstate traffic of the country.' *Dayton-Goose Creek R. R. v. United States*, 263 U. S. 456, 478; *Texas & P. R. R. v. Gulf C. & S. F. R. R.*, 270 U. S. 266, 277. And in administering it, the Commission was to be guided primarily by consid-eration for 'adequacy of transportation service, . . . its essential conditions of economy and efficiency, and . . . appropriate provision and best use of transportation facil-ities . . . ' *New York Central Securities Corp. v. United States*, 287 U. S. 12, 25."

It is to be noted that Section 15 (3), upon which Section 15 (4) of the Act is a limitation, employs the term "public interest". Thus, although Congress did not add the word "service" after the word "transportation" in clause (b) of Section 15 (4), as the Supreme Court did when referring to adequate, economic and efficient transportation in *New York Central Securities v. United States*, and the later de-cisions, *supra*, adopting the same view, it is only reason-able to assume that Congress meant the same thing. If further support be needed for this conclusion, we feel that it is to be found in the declaration of a national transporta-tion policy as defined in the Transportation Act of 1940 (49 U. S. C. A. Sec. 301, note), which asserts that "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regula-tion of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to *promote safe, adequate, economical and efficient service* and foster sound economic

conditions in transportation and among the several carriers * * *." (*Italics inserted*).

We find nothing inconsistent with the foregoing in the [fol. 135] definition of the term "transportation" as explained in Section 1 (3) (a) of the Act (49 U. S. C. A. Sec. 1 (3) (a)) which we have heretofore quoted, and upon which the carriers place much reliance, because this definition is one of expansion, of inclusion rather than of limitation; and furthermore, while it is true that it embraces "instrumentalities and facilities of shipment or carriage", it equally embraces "all services" in connection with the receipt, transportation, delivery and handling in any form of shipments consigned to carriers. In short, it would be absurd to say that this use of the word "services" is not confirmatory of the basic policy to safeguard the shippers' interests.

It is to be noted that Section 15 (4), in the proviso immediately following clause (b), recites "that in prescribing through routes the Commission shall, *so far as is consistent with the public interest*, and subject to the foregoing limitations of clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic." (*Italics inserted*).

So the Commission cannot preserve the long-haul even to the originating carrier if such would be contrary to the public interest, namely, in such case, the shipping public. The carriers contend that if the Commission's interpretation of clause (b) is allowed to stand, a carrier may be short-hauled every time a shipper can show that it will be cheaper or more efficient from his standpoint alone, if that is done. This is not our view. Under the construction which we give to clause (b), even if the shipper is able to prove that the proposed new route would give him more efficient or more economic transportation,—better (as for example quicker) or cheaper service,—since, by the express language of paragraph (3) of Section 15, the Commission may never establish a through route unless "deemed by it to be necessary or desirable in the public interest," we have no doubt but that this language, fairly interpreted, [fol. 136] must be taken to include also considerations of railroad operating efficiency and economy, which, in a given case, may control over considerations in the shipper's favor.

Finally, we feel we scarcely need say more to make it clear that the Transportation Act of 1940, is very broad, remedial legislation. For this reason, as the Supreme Court has said about the Transportation Act of 1920, it should "be given a liberal interpretation; but for the same reason exemptions from its sweep should be narrowed and limited to effect the remedy intended." *Piedmont & Northern Railway v. Interstate Commerce Commission*, 286 U. S. 299, 311-312. See also, *McDonald v. Thompson*, 305 U. S. 263, 266; *Gregg Cartage Co. v. United States*, 316 U. S. 74, 83.

To summarize our conclusions as to the precise character of the restriction which clause (b) of Section 15 (4) of the Act imposes upon the Commission's power to order the establishment of new through routes which short-haul a railroad without its consent, we are of the opinion that the exception embodied in that clause must be interpreted to mean "adequate, and more efficient or more economic, transportation" from the shipper's as well as from the carrier's standpoint, and that, therefore, the Commission has authority under this clause, to consider and weigh the relative importance of all factors affecting both shipper and the carrier.

Having thus interpreted clause (b) of Section (4), we now turn to a consideration of the question whether the Commission, in the present case, has, as the carriers contend, exceeded the authority granted it by this clause.

[fol. 137] The Commission's Findings

The principal findings of fact made by the Commission may be summarized as follows: The margin of profit of Stickell's products is small. The two principal items involved in the prices at which these products are sold are the amounts paid for the ingredients and freight charges. Feed manufacturers at the rate-break points, and at Buffalo, New York; Fort Wayne and Indianapolis, Indiana; Cincinnati, Toledo, Cleveland and Akron, Ohio; and Pittsburgh, Lancaster and York, Pennsylvania, can reach the markets in Delaware, Maryland and Virginia, between the Chesapeake and Delaware Bays, in competition with Stickell, at the same through rates as Stickell. However, Stickell, on grain purchased at these same points of origin when the Pennsylvania receives the traffic at or west of Pitts-

burgh or Buffalo, must pay 90¢ a ton more, or, when other carriers perform the in-bound haul, then must pay combination rates. The new through rates in controversy are well established up to Hagerstown and are generally accepted as reasonable by both shippers and carriers to points in eastern territory. There is no proof that those routes would be less economical as parts of the entire new through routes to destinations in question on the Pennsylvania, than to destinations on the other carriers' lines in eastern territory. On the contrary, the new routes would not result in any cross-haul but would eliminate an out-of-line haul of 149 miles and two switching interchanges at Hagerstown, and would relieve the Pennsylvania of the expense of maintaining the transit privilege or service, and of absorbing the switching charges at Hagerstown, where the Western Maryland would bear all transit and switching expense.

The Pennsylvania interchanges traffic with the Western Maryland at York and Fulton Junction (the junction points that would be utilized under the new through routes) once every twenty-four hours; and while the interchange tracks [fol. 138] at those junction points are now used to near, and some times to full capacity, operating conditions there are no more difficult than operating conditions now encountered at Hagerstown.

One day is required for transportation each way between Harrisburg and Hagerstown, and one day for each interchange, between the Western Maryland and the Pennsylvania at Hagerstown, or a total of four days consumed in the out-of-line haul, and on the average, an additional three to four days is required for the movement of a car from Stickell's plant to destination points in Delaware, Maryland and Virginia; whereas, based on the fact that the out-of-line and interchange service at Hagerstown would be eliminated, and on the fact that a car leaving Hagerstown via the Western Maryland late in the morning, arrives at Elsmere Junction (Wilmington, Delaware) on the Reading, the next morning, Stickell's estimate that there would be saved two days in reaching these destination points over the new through routes, is to be accepted as correct, because there is no categorical denial of same by the Pennsylvania, supported by concrete statistical data.

The Commission relied upon a further finding that in order to meet the demands of customers for prompt delivery, complainants had shipped 640 cars of its products from Hagerstown over the Western Maryland and the Reading to Elsmere Junction, thence by truck to points on the Delaware, Maryland, Virginia Peninsula.

We are fully satisfied, after an examination of the record before the Commission, that it contains ample, substantial evidence to support all of the findings of fact made by the Commission which we have just summarized, and that being the case, we are equally satisfied that these facts amply support the Commission's ultimate finding (255 I. C. C. 333 at 344) "that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation," within the meaning which [fol. 139] we have found in the earlier part of this opinion must be given to clause (b) of Section 15(4).

This Court may not disturb findings of fact made by the Commission unless it has acted arbitrarily or without substantial evidence to support its conclusions, or has transcended its Constitutional or statutory powers. *Interstate Commerce Commission v. Delaware, L. & W. Rwy. Co.*, 220 U. S. 235; *Proctor & Gamble v. United States*, 225 U. S. 282, *United States v. Louisville & Nashville R. R. Co.*, 235 U. S. 314, *Standard Oil Co. v. United States*, 283, U. S. 235, *B. & O. R. R. Co. v. United States*, 298 U. S. 349, *Purcell v. United States*, 315 U. S. 381, *Interstate Commerce Commission v. Hoboken Mfgs. R. R. Co.* decided December 6, 1943. In other words, the credibility of witnesses and the weight of the evidence are matters for the Commission and not for the courts to determine, and the Commission's findings in these respects cannot be reviewed by the courts if supported by substantial evidence.

Of course, the Commission would clearly not be justified in attempting to neutralize the disadvantage of geographical location such as Stickell has, by requiring of a carrier wasteful or additional service, without adequate compensation, even though Stickell might, for competitive or other business reasons, be in dire need thereof. But, there is an absence of any convincing evidence in the present case that through the establishment of the new through routes the Pennsylvania would not be adequately compensated or that its facilities or services which it owes to other shippers

generally would be interfered with. The rates are to be the same for the new routes as for the existing ones. It is significant also, that Stickell's plant is not located upon the Pennsylvania Railroad at Hagerstown but upon the Western Maryland Railway. The latter carrier does not appear as a protestant of the Commission's action.

The gist of the carriers' contention as developed in the extensive arguments and briefs presented by their counsel, [fol. 140] appears to be that in order to support the Commission's findings it must appear that the Commission itself found two things to be a fact: First, that the existing through route is inadequate; and second, that the prescribed new routes will be either more efficient or more economic from carriers' operating standpoint. Since, as it is contended, the Commission has found that the existing route is adequate, a finding of one of the prerequisites being lacking, the Commission's ultimate conclusion must be rejected.

This argument, we believe, is without merit. It is based upon the false promise that the short-hauling limitation in Section 15 (4) of the Act cannot be subject to *any* exception by virtue of clause (b) as long as there is *any* through route between the given termini which is satisfactory to other shippers; in other words, that there is no authority for ordering a through route to pass through any particular intermediate point. While, of course, it is true, there is no express requirement of law that routes *must* pass through particular intermediate points, and neither the short-hauling provisions nor any other provision of the Act can be read as implying such requirement (*United States v. Missouri Pacific R. R. Co.*, and *Stickell & Sons v. Western Maryland Railway Co.*, *supra*), it is illogical to say that where a carrier, as is true in the present case, is already serving a shipper by one through route, such shipper may not be heard on the question, and have the Commission determine whether he is entitled to a different and more advantageous through route. Thus, when the Commission found (255 I. C. C. 340) "that the Pennsylvania maintains sufficiently frequent service to meet all reasonable demands and that it can and does furnish adequate facilities to handle any and all grain traffic likely to be given to it at western origins for movement over its direct routes or over its routes via Hagerstown to eastern destina-

the Transportation Act, when the law as it now stands was enacted, embracing clause (b) which we have heretofore quoted and which is the provision here in issue.

So much for the evolution of the clause which we are called upon to interpret. This summary of the various legislative enactments which finally resulted in its adoption may be said still to leave some doubt as to the precise intent that lay behind the adoption by Congress of the phraseology of clause (b). In other words, a mere chronology of the various legislative steps fails to explain just how far Congress intended the Commission might go in invoking clause (b). However, reports of Congressional committees and explanatory statements made by their members in presenting a bill for passage are legitimate aids to the interpretation of a statute if there is any doubt as to the intended meaning of the language employed. *Pennsylvania R. R. Co. v. International Coal Co.*, 230 U. S. 184; *Duplex Printing Press Co. v. Deering*, 254 U. S. 443; *Wisconsin Railroad Commission v. C. B. & Q. R. R. Co.*, 257 U. S. 563; *United States v. Missouri Pacific Railway Co.*, *supra*. See also, *Helvering v. Griffiths*, 318 U. S. 371. Therefore, it is appropriate for us to resort to such interpretative aids in the present case.

First, it is appropriate to note, because not disputed, that the Commission requested of Congress complete authority to fix through routes and joint rates with no limitation other than that there must be proven need for same *in the public interest*. But Congress ultimately refused to go this far. In the bill which finally became the Transportation Act of 1940, 54 Stat. L. 898, and bore Senate number 2009 as first passed by the Senate (76th Cong. 1st Ses.), the short-haul restriction had been entirely eliminated from Section 15 (4). The House amended the bill and reinserted Section 15 (4). Thereupon, clause (b) was written into the bill by the Conference Committee on the disagreeing votes of the two Houses, in the form in which it was finally enacted. The report of the Conference Committee as submitted to the House contains an explanatory statement by Mr. Lea concerning the short-haul provision in which is to be found the following (H. R. Report, No. 2832, 76th Congress, 1st sess. pp. 70-71): "The House amendment made no change in the short-haul provision of section 15 (4) and the exceptions thereto. The Conference substitute in section 10 (b) retains them and includes another excep-

tion by proving that the restriction against short-hauling a rail carrier shall not apply where the Commission finds that the through route proposed to be established is needed in order to provide adequate and more efficient or more economic transportation. The Commission, in the exercise of this additional authority, is directed to give reasonable preference in any particular case to the carrier by railroad which originates the traffic, so far as is consistent with the public interest and subject to the limitations with respect to unreasonably long routes and the necessity of providing adequate and more efficient or more economic transportation. The Commission is prohibited from establishing any through route and joint rates applicable thereto for the purpose of assisting any carrier that would participate therein to meet its financial needs."

[fol. 130] There is little to be derived from other Committee reports which throws any further light upon just what meaning Congress intended to attach to the use of the words "adequate, and more efficient or more economic transportation." The carriers' brief is replete with extensive quotations of statements made by railroad witnesses at hearings which were held before various Congressional committees in connection with a number of independent through route bills which, however, were never enacted. The carriers stress the fact that these witnesses used the words "efficient" and "economic" from a railroad operating standpoint. However, conceding that they did, and apart from any question as to our right to resort to such statements as an aid in interpreting the meaning of a statute (in *Helvering v. Griffiths*, supra, the Supreme Court would appear to indicate, contrary to its earlier decisions, that *any* statement or debate made in Congress relative to a particular bill may be resorted to as an interpretative aid in case of doubt as to its meaning as enacted) we conclude that, with the legislative history and background which we have just reviewed, the better view is that the words employed in clause (b) clearly indicate that Congress must have intended the broad meaning which the Commission has given to these words, rather than the restricted meaning upon which the carriers are insisting.

For example, one of the prerequisites of clause (b) before the new through route may be established is that it is needed in order to provide "adequate transportation". Obviously, Congress could not have been referring to the

carriers by employing these words because it would be meaningless to speak of the railroad itself needing "adequate transportation". On the other hand, it is a truism to say that the shipping public may have need for such. It is true the adjective "adequate" does not stand alone but is coupled with the adjectives "efficient" and "economic", and these adjectives, of course, must reasonably be construed as referring either to the services received by the shipper or to operations from the railroad standpoint, or to both. Since all three adjectives employed qualify [fol. 131] ify the same noun, "transportation", and since, as we have seen, it would not be sensible to say that the noun when qualified by the first of these adjectives was intended to relate to something which the carrier, as opposed to the shipper, needed, it is, therefore, entirely reasonable to say that the other two adjectives must be taken as having been employed for the purpose of qualifying the same noun when used in the latter sense, but also when used in an operating sense because their qualifying of the noun "transportation," unlike the adjective "adequate", is just as meaningful with reference to carriers' as to shippers' needs.

Language somewhat similar to that under discussion is to be found in Section 15 (a) (2) of the Interstate Commerce Act as amended by the Act of June 16, 1933 (48 Stat. 220), as follows: "In the exercise of its power to prescribe just and reasonable rates The Commission shall [fol. 132] *give due consideration*, among other factors • • • *to the need, in the public interest of adequate and efficient railway transportation service* at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service." (Italics inserted). Also, in the further amendment of this Section by the Transportation Act of 1940 (49 U. S. C. A. Sec. 15 (a) (2)), we find the identical language. It will thus be seen that the phraseology now before us is in effect merely an abbreviation of the phraseology which Congress had previously employed in another part of the Interstate Commerce Act as early as 1933. There can be no doubt as to the meaning of the language then and there employed, because it is plain and unambiguous to the effect that the needs of both the shipping public and the carriers must be safeguarded. Thus, it is only

logical to say that when Congress employed similar but somewhat abbreviated language in Section 15 (4) (b), it did so with the same purpose in mind.

Support for this view is found in decisions of the Supreme Court construing the term "public interest" in the Transportation Act of 1920, the Emergency Railroad Transportation Act of 1933, and the Transportation Act of 1940. For example, in *New York Central Securities Co. v. United States*, 287 U. S. 12, in referring to the criterion, "public interest", as used in Section 5 of the Interstate Commerce Act (as amended by the Transportation Act of 1920), whereby consolidations of carriers were permitted when the Commission found them to be in the "public interest", the Court said (pages 24-25): "Appellant insists that the delegation of authority to the Commission is invalid because the stated criterion is uncertain. That criterion is the 'public interest'. It is a mistaken assumption that this is a mere general reference to public welfare without any standard to guide determinations. The purpose of [fol. 133] the Act, the requirements it imposes, and the context of the provision in question show the contrary. Going forward from a policy mainly directed to the prevention of abuses, particularly those arising from excessive or discriminatory rates, Transportation Act, 1920, was designed better to assure adequacy in transportation service The provisions now before us were among the additions made by Transportation Act, 1920, and the term 'public interest' as thus used is not a concept without ascertainable criteria, but *has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities, questions to which the Interstate Commerce Commission has constantly addressed itself in the exercise of the authority conferred.*" (Italics inserted).

This language has been adopted and quoted in several later decisions of the Supreme Court, relating to carrier consolidations. For example, we find reaffirmance of it in *Texas v. United States*, 292 U. S. 522, 531; in *United States v. Lowden*, 308 U. S. 225, 230, and again, in a very recent decision, *McLean Trucking Co. v. United States*, decided January 17, 1944, where the following is said, (page —): "The national transportation policy is the

product of a long history of trial and error by Congress in attempting to regulate the nation's transportation facilities beginning with the Interstate Commerce Act of 1887. For present purposes it is not necessary to trace the history of those attempts in detail other than to note that the Transportation Act of 1920 marked a sharp change in the policies and objectives embodied in those efforts. 'Therefore, the effort of Congress had been directed mainly to the prevention of abuses; particularly, those arising from excessive or discriminatory rates; and emphasis on the preservation of free competition among carriers was part of that effort. The act of 1920 added 'a new and important [fol. 134] object to previous interstate commerce legislation.' It sought 'affirmatively to build up a system of railways prepared to handle promptly the interstate traffic of the country.' *Dayton-Goose Creek R. R. v. United States*, 263 U. S. 456, 478; *Texas & P. R. R. v. Gulf C. & S. F. R. R.*, 270 U. S. 266, 277. And in administering it, the Commission was to be guided primarily by consideration for 'adequacy of transportation service, . . . its essential conditions of economy and efficiency, and . . . appropriate provision and best use of transportation facilities . . . ' *New York Central Securities Corp. v. United States*, 287 U. S. 12, 25."

It is to be noted that Section 15 (3), upon which Section 15 (4) of the Act is a limitation, employs the term "public interest". Thus, although Congress did not add the word "service" after the word "transportation" in clause (b) of Section 15 (4), as the Supreme Court did when referring to adequate, economic and efficient transportation in *New York Central Securities v. United States*, and the later decisions, *supra*, adopting the same view, it is only reasonable to assume that Congress meant the same thing. If further support be needed for this conclusion, we feel that it is to be found in the declaration of a national transportation policy as defined in the Transportation Act of 1940 (49 U. S. C. A. Sec. 301, note), which asserts that "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical and efficient service and foster sound economic

conditions in transportation and among the several carriers * * *." (Italics inserted).

We find nothing inconsistent with the foregoing in the [fol. 135] definition of the term "transportation" as explained in Section 1 (3) (a) of the Act (49 U. S. C. A. Sec. 1 (3) (a)) which we have heretofore quoted, and upon which the carriers place much reliance, because this definition is one of expansion, of inclusion rather than of limitation; and furthermore, while it is true that it embraces "instrumentalities and facilities of shipment or carriage", it equally embraces "all services" in connection with the receipt, transportation, delivery and handling in any form of shipments consigned to carriers. In short, it would be absurd to say that this use of the word "services" is not confirmatory of the basic policy to safeguard the shippers' interests.

It is to be noted that Section 15 (4), in the proviso immediately following clause (b), recites "that in prescribing through routes the Commission shall, *so far as is consistent with the public interest*, and subject to the foregoing limitations of clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic." (Italics inserted).

So the Commission cannot preserve the long-haul even to the originating carrier if such would be contrary to the public interest, namely, in such case, the shipping public. The carriers contend that if the Commission's interpretation of clause (b) is allowed to stand, a carrier may be short-handed every time a shipper can show that it will be cheaper or more efficient from his standpoint alone, if that is done. This is not our view. Under the construction which we give to clause (b), even if the shipper is able to prove that the proposed new route would give him more efficient or more economic transportation,—better (as for example quicker) or cheaper service,—since, by the express language of paragraph (3) of Section 15, the Commission may never establish a through route unless "deemed by it to be necessary or desirable in the public interest," we have no doubt but that this language, fairly interpreted, [fol. 136] must be taken to include also considerations of railroad operating efficiency and economy, which, in a given case, may control over considerations in the shipper's favor.

Finally, we feel we scarcely need say more to make it clear that the Transportation Act of 1940, is very broad, remedial legislation. For this reason, as the Supreme Court has said about the Transportation Act of 1920, it should "be given a liberal interpretation; but for the same reason exemptions from its sweep should be narrowed and limited to effect the remedy intended." *Piedmont & Northern Railway v. Interstate Commerce Commission*, 286, U. S. 299, 311-312. See also, *McDonald v. Thompson*, 305 U. S. 263, 266; *Gregg Cartage Co. v. United States*, 316 U. S. 74, 83.

To summarize our conclusions as to the precise character of the restriction which clause (b) of Section 15 (4) of the Act imposes upon the Commission's power to order the establishment of new through routes which short-haul a railroad without its consent, we are of the opinion that the exception embodied in that clause must be interpreted to mean "adequate, and more efficient or more economic, transportation" from the shipper's as well as from the carrier's standpoint, and that, therefore, the Commission has authority under this clause, to consider and weigh the relative importance of all factors affecting both shipper and the carrier.

Having thus interpreted clause (b) of Section (4), we now turn to a consideration of the question whether the Commission, in the present case, has, as the carriers contend, exceeded the authority granted it by this clause.

[fol. 137] The Commission's Findings

The principal findings of fact made by the Commission may be summarized as follows: The margin of profit of Stickell's products is small. The two principal items involved in the prices at which these products are sold are the amounts paid for the ingredients and freight charges. Feed manufacturers at the rate-break points, and at Buffalo, New York; Fort Wayne and Indianapolis, Indiana; Cincinnati, Toledo, Cleveland and Akron, Ohio; and Pittsburgh, Lancaster and York, Pennsylvania, can reach the markets in Delaware, Maryland and Virginia, between the Chesapeake and Delaware Bays, in competition with Stickell, at the same through rates as Stickell. However, Stickell, on grain purchased at these same points of origin when the Pennsylvania receives the traffic at or west of Pitts-

burgh or Buffalo, must pay 90¢ a ton more, or, when other carriers perform the in-bound haul, then must pay combination rates. The new through rates in controversy are well established up to Hagerstown and are generally accepted as reasonable by both shippers and carriers to points in eastern territory. There is no proof that those routes would be less economical as parts of the entire new through routes to destinations in question on the Pennsylvania, than to destinations on the other carriers' lines in eastern territory. On the contrary, the new routes would not result in any cross-haul but would eliminate an out-of-line haul of 149 miles and two switching interchanges at Hagerstown, and would relieve the Pennsylvania of the expense of maintaining the transit privilege or service, and of absorbing the switching charges at Hagerstown, where the Western Maryland would bear all transit and switching expense.

The Pennsylvania interchanges traffic with the Western Maryland at York and Fulton Junction (the junction points that would be utilized under the new through routes) once every twenty-four hours; and while the interchange tracks [fol. 138] at those junction points are now used to near, and some times to full capacity, operating conditions there are no more difficult than operating conditions now encountered at Hagerstown.

One day is required for transportation each way between Harrisburg and Hagerstown, and one day for each interchange, between the Western Maryland and the Pennsylvania at Hagerstown, or a total of four days consumed in the out-of-line haul, and on the average, an additional three to four days is required for the movement of a car from Stickell's plant to destination points in Delaware, Maryland and Virginia; whereas, based on the fact that the out-of-line and interchange service at Hagerstown would be eliminated, and on the fact that a car leaving Hagerstown via the Western Maryland late in the morning, arrives at Elsmere Junction (Wilmington, Delaware) on the Reading, the next morning, Stickell's estimate that there would be saved two days in reaching these destination points over the new through routes, is to be accepted as correct, because there is no categorical denial of same by the Pennsylvania, supported by concrete statistical data.

The Commission relied upon a further finding that in order to meet the demands of customers for prompt delivery, complainants had shipped 640 cars of its products from Hagerstown over the Western Maryland and the Reading to Elsmere Junction, thence by truck to points on the Delaware, Maryland, Virginia Peninsula.

We are fully satisfied, after an examination of the record before the Commission, that it contains ample, substantial evidence to support all of the findings of fact made by the Commission which we have just summarized, and that being the case, we are equally satisfied that these facts amply support the Commission's ultimate finding (255 I. C. C. 333 at 344) "that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation," within the meaning which [fol. 139] we have found in the earlier part of this opinion must be given to clause (b) of Section 15(4).

This Court may not disturb findings of fact made by the Commission unless it has acted arbitrarily or without substantial evidence to support its conclusions, or has transcended its Constitutional or statutory powers. *Interstate Commerce Commission v. Delaware, L. & W. Rwy. Co.*, 220 U. S. 235; *Proctor & Gamble v. United States*, 225 U. S. 282; *United States v. Louisville & Nashville R. R. Co.*, 235 U. S. 314; *Standard Oil Co. v. United States*, 283, U. S. 235; *B. & O. R. R. Co. v. United States*, 298 U. S. 349; *Purcell v. United States*, 315 U. S. 381; *Interstate Commerce Commission v. Hoboken Mfgs. R. R. Co.* decided December 6, 1943. In other words, the credibility of witnesses and the weight of the evidence are matters for the Commission and not for the courts to determine, and the Commission's findings in these respects cannot be reviewed by the courts if supported by substantial evidence.

Of course, the Commission would clearly not be justified in attempting to neutralize the disadvantage of geographical location such as Stickell has, by requiring of a carrier wasteful or additional service, without adequate compensation, even though Stickell might, for competitive or other business reasons, be in dire need thereof. But, there is an absence of any convincing evidence in the present case that through the establishment of the new through routes, the Pennsylvania would not be adequately compensated or that its facilities or services which it owes to other shippers

generally would be interfered with. The rates are to be the same for the new routes as for the existing ones. It is significant also, that Stickell's plant is not located upon the Pennsylvania Railroad at Hagerstown but upon the Western Maryland Railway. The latter carrier does not appear as a protestant of the Commission's action.

The gist of the carriers' contention as developed in the extensive arguments and briefs presented by their counsel, [fol. 140] appears to be that in order to support the Commission's findings it must appear that the Commission itself found two things to be a fact: First, that the existing through route is inadequate; and second, that the prescribed new routes will be either more efficient or more economic from carriers' operating standpoint. Since, as it is contended, the Commission has found that the existing route is adequate, a finding of one of the prerequisites being lacking, the Commission's ultimate conclusion must be rejected.

This argument, we believe, is without merit. It is based upon the false promise that the short-hauling limitation in Section 15 (4) of the Act cannot be subject to *any* exception by virtue of clause (b) as long as there is *any* through route between the given termini which is satisfactory to other shippers; in other words, that there is no authority for ordering a through route to pass through any particular intermediate point. While, of course, it is true, there is no express requirement of law that routes *must* pass through particular intermediate points, and neither the short-hauling provisions nor any other provision of the Act can be read as implying such requirement (*United States v. Missouri Pacific R. R. Co.*, and *Stickell & Sons v. Western Maryland Railway Co.*, *supra*), it is illogical to say that where a carrier, as is true in the present case, is already serving a shipper by one through route, such shipper may not be heard on the question, and have the Commission determine whether he is entitled to a different and more advantageous through route. Thus, when the Commission found (255 I. C. C. 340) "that the Pennsylvania maintains sufficiently frequent service to meet all reasonable demands and that it can and does furnish adequate facilities to handle any and all grain traffic likely to be given to it at western origins for movement over its direct routes or over its routes via Hagerstown to eastern destina-

tions," this is not to be taken as a finding which precluded [fol. 141] the Commission from determining whether Stickell is getting, by reason of such routes, all the through route service that it is entitled to. In short, as we interpret the law, Stickell has the right to have its individual case considered from the point of view whether it is entitled to a route that is not *only* adequate, but *also* affords it "more efficient",—that is, better,—or "more economic"—that is cheaper,—transportation service.

The record before the Commission shows that other plants on branch lines of the Pennsylvania are subject to back-hauls and back-haul charges. For example, a plant at Bedford, Pennsylvania, is charged 3c. Another plant at Reading, Pennsylvania, is charged 3¼¢, and one at Frederick, Maryland, 3¾¢. But this is merely evidence of a practice and is not probative of the fairness of such practice when applied to the circumstances surrounding Stickell. Indeed, as the Commission very appropriately pointed out (255 I. C. C. 333 at 342). "The justification for a special charge for out-of-line hauls is that routes that require such additional services are not comparable with and are less economical than routes which do not."

We may assume the correctness of the carriers' evidence that via the prescribed new routes the total elapsed time for shipments to move from origin to destination points would, generally speaking, be longer than over the existing route. But this is not controlling, because what Stickell is most concerned with is prompt delivery of its *products*. As to them, there is no *through* movement except in the fictional sense. Of course, Stickell must count upon receiving its grain and grain products with reasonable promptness, so as to have on hand sufficient materials out of which to manufacture its products. But, practically speaking, the time taken for a carload of grain to reach the plant, would not [fol. 142] control the time when a carload of the finished product would leave the plant. It is the movement from plant to customer that is really at issue.

Likewise, we believe the Commission was correct in rejecting the contentions of the Pennsylvania that the routes sought are not "necessary and desirable" in the public interest because the request for same was not supported by any shipper of grain or grain products at points of origin, or by any receiver or consumer of the mixed feed at destination points. Stickell's business is substantial. Its annual

production is about 60,000 tons. It shipped in the year 1940, 675 cars over the existing route via the Pennsylvania, with the back-haul to Hagerstown. It is entitled to have its case individually and fully considered and determined.

It is true the evidence introduced before the Commission by the carriers was uncontradicted to the effect that the prescribed new routes would substantially increase the number of participating carriers and the number of interchange services. For example, on traffic originating at points in Central Territory (including market points not served by the Pennsylvania), these routes would, generally speaking, substitute 4 or 5-line hauls for 2-line hauls via the Pennsylvania; and where the traffic did not originate on the New York Central or the Wabash, would, generally speaking, involve 5 or 6-line hauls.

Also, it was shown that the interchange expense incident to multiple-line hauls as compared with single-line hauls, is substantial. For example, via the direct route of the Pennsylvania from Chicago to Salisbury, there is no extra operating expense involved for inter-carrier interchange; whereas, under the prescribed new routes, the interchange expense is an important item, in one or more instances (depending upon the precise routing) aggregating nearly \$40.00 per assumed box car equipment of 33 tons of grain. It is upon these facts that the carriers rest their argument in [fol. 143] its last analysis, namely, that a carrier should be permitted to restrict origin and destination territory to points over such routes as will involve as few carriers as possible.

As respects comparative freight services costs, the Pennsylvania endeavored to prove by data presented to the Commission that these costs over the prescribed new routes would be much greater than over the existing routes. For example, on the same assumed box car equipment of 33 tons to Hagerstown and of 1.34 cars of out-bound products on the basis of 24.6 car tons after milling or mixing in transit, the freight service cost from Chicago to Salisbury, over the Pennsylvania's present route was shown to be \$184.10; whereas over the prescribed new routes 1 and 2, the cost was shown to be \$191.18 and \$232.08, respectively. However, we believe the Commission had the right to attach relatively limited value, as it did, to such cost studies, be-

cause based upon the Pennsylvania's average system costs and the average system costs of the other affected carriers, on all less-than-carload and carload freight, while in the present case, we are concerned with a heavy loading commodity, moving comparatively long distances, in well defined channels, which may well give rise to numerous different and controlling factors.

We believe it to be true, as the carriers contend, that, for the purposes of the precise issue now before us, little importance should be attached to the Commission's finding that in order to meet the demands of customers for prompt delivery, Stickell shipped 640 cars of its products from Hagerstown over the Western Maryland and the Reading, to Elsmere Junction (Delaware), thence by truck to destination points, because the comparison contemplated by clause (b) of Section 15 (4) must be as between the proposed routes and existing routes by *railroad*, and a comparison of a combination rail-motortruck service with all-rail service over either routes, is not contemplated. However, when [fol. 144] all of the other considerations which weigh most heavily in favor of the carriers and which we have just analyzed, have been given their full weight, we are completely satisfied that the Commission was justified in finding them, on the evidence presented, to be subordinate to the considerations which favor the shipper.

The carriers maintain that the result of permitting the Commission to prescribe the new through routes will be an arbitrary exercise of power by the Commission in violation of the due process provisions of the Fifth Amendment to the Constitution. However, no claim is made that the establishment of the prescribed new routes would, in fact, be confiscatory or that the carriers have a Constitutional right to have their long-hauls maintained. The long history of the legislation involving the carriers' rights in this respect and the clear assertion in the various decisions of the Supreme Court that the carriers have no such right, would seem sufficient to refute this contention. In short, unless the Commission has erred (1) in interpreting clause (b) of Section 15 (4); or (2) though correctly interpreting it, has, nevertheless, applied it in the present case in a manner not supported by substantial evidence, there can be no violation of the carriers' substantive rights.

It is claimed that the Commission's decision will establish a precedent which will have an injurious effect upon the rate structure and revenues of carriers generally,—that it will lead to demand for the general application of the same principle, thereby bringing about a complete change in the structure of through routes and joint rates on grain as effects Trunk Line Territory, with resulting cross-hauling and increased expense of operation. The Commission's answer is that even if such be true, "that would be no reason for denying complainant just and reasonable through routes at the established joint rates." (255 I. C. C. at 337.) We need not, and do not go that far, because this apprehension of the carriers is not supported by that degree of proof in [fol. 145] the present record necessary to determine the over-all effect of this individual case, and there is enough to indicate that there may well be reasons for differentiating the situation at some, if not at all of the other transit points referred to.

There is one final point made in support of the carriers' contention, but we feel that a mere statement of it is a sufficient refutation of its application to the present case. We refer to the claim made by the Pennsylvania that since the Commission's order rests in part upon a finding of breach of duty under Section 3 (4) of the Interstate Commerce Act (49 U. S. C. A. Sec. 3 (4)), requiring a carrier to "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines. * * *," the carriers are entitled to a separate hearing before the Commission with respect to whether that particular provision of the law has been violated, and that the hearing which has been had was not an equivalent.

What the Commission said on this point is as follows (255 I. C. C. at 341): "It is the duty of carriers to afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and connecting lines. That requirement of Section 3 (4) by necessary implication means that such interchange facilities must be adequate to handle all traffic that may reasonably be expected to require interchange at such points. It is no defense to a complaint seeking through routes necessary and desirable in the public interest to show that a carrier has failed to perform its duty to establish such facilities and that by reason of that neglect of duty it is more convenient from an operating stand-

point for it to haul traffic 149 miles out of line." This is a correct interpretation of the law. Merely because the Commission has seen fit to relate the two parts of the Act to each other, is no justification for saying that the present case must be converted or extended into a hearing under [fol. 146] Section 3 (4). If, as a result of the new routes prescribed by the Commission becoming effective, new questions as to the sufficiency or equality of interchange facilities should arise, both the carriers and any shippers involved therein may seek an appropriate hearing before the Commission.

Conclusions

We conclude, for the reasons set forth, that the Commission has (1) correctly interpreted clause (b) of Section 15 (4) of the Transportation Act of 1940; (2) has applied it in the present case in a manner supported by substantial evidence; and (3) that such application violates no Constitutional rights of the petitioning carriers. Therefore, the petition must be dismissed.

In view of the nature of this case, the Interstate Commerce Commission having made findings of fact, and this Court finding substantial evidence to support the same, it is assumed that no further or other statement of the ultimate or evidentiary facts is required under Rule 52 of the Federal Rules of Civil Procedure beyond those stated in the opinion; and also that the conclusions of law herein need not be separately stated.

William C. Coleman.

[fol. 147] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MARYLAND

PENNSYLVANIA RAILROAD COMPANY, et al., Petitioners,

v.

UNITED STATES OF AMERICA, Defendant,

and

INTERSTATE COMMERCE COMMISSION, D. A. STICKELL & SONS,
INC., Intervening Defendants

FINAL DECREE—Filed March 22, 1944

This cause having come on to be heard upon final hearing, upon the pleadings, proofs, arguments and briefs, of

petitioners and defendant and intervening defendants, before a duly constituted District Court of three judges pursuant to the provisions of law, and upon consideration thereof, and the Court being fully advised in the premises, it is hereby finally determined, ordered and decreed as follows:

1. The order of the Interstate Commerce Commission made on March 18, 1943, in Docket No. 28647, *D. A. Stickell & Sons, Inc. v. Alton Railroad Company et al.*, 255 I. C. C. 333, was within the statutory authority of the Commission and was made upon substantial evidence and in accordance with applicable law and is in all respects valid.

[fol. 148] 2. The relief prayed for in the complaint is hereby denied and the complaint is dismissed for want of equity at petitioners' costs.

Morris A. Soper, United States Circuit Judge; William C. Coleman, United States District Judge; W. Calvin Chesnut, United States District Judge.

Dated March 22, 1944.

[fol. 149] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION OF PETITIONERS FOR STAY PENDING APPEAL—
Filed March 22, 1944

To the Honorable Morris A. Soper, Circuit Judge, William C. Coleman, District Judge, and W. Calvin Chesnut, District Judge:

Now come The Pennsylvania Railroad Company; The Atchison, Topeka and Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; Charles M. Thomson, As Trustee of the Property of The Chicago and North Western Railway Company, A Corporation; Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustee-); Joseph B. Fleming and Aaron Colnon, Trustees of The Chicago, Rock Island and Pacific Railway Company; Louisville and Nashville Railroad Company; G. W. Webster and Joseph Chapman, Trustees of Minneapolis,

St. Paul & Sault Ste. Marié Railway Company; Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, [fol. 150] Debtor; The New York Central Railroad Company; The Pittsburgh and Lake Erie Railroad Company; Southern Railway Company, and Wabash Railroad Company, petitioners in the above-entitled suit, and respectfully move the Court to enter an order herein, staying and suspending the order of the Interstate Commerce Commission dated March 18, 1943, as amended, in its Docket No. 28647, D. A. Stickell & Sons, Inc. v. The Alton Railroad Company et al., pending the perfecting and determination of an appeal to the Supreme Court of the United States from the Final Decree of this Court herein, when entered, and for reasons thereof respectfully present to the Court as follows:

1. The aforesaid order of the Interstate Commerce Commission of March 18, 1943 as amended requires the petitioners and each of them to establish on or before April 17, 1944, upon 15 days' notice, and thereafter to maintain and apply the rates specified therein over certain other routes therein prescribed which short-haul one or more of the petitioners without their consent.

2. On March 2, 1944, this Court filed an opinion announcing that the petition would be dismissed.

3. Petitioners, being advised that they have the right under the statutes to appeal to the Supreme Court of the United States from the final decree of this Court, when entered, dismissing their bill, purpose to exercise that right promptly after the decree of dismissal shall have been entered.

4. At the time of the filing of the opinion of this Court herein, the Commission's said order of March 18, 1943, as subsequently amended, required compliance therewith as aforesaid on or before April 17, 1944, by notice to the Commission and the general public by not less than 30 days' filing and posting in the manner prescribed in Section 6 of the Interstate Commerce Act. At the request of petitioners [fol. 151] the Commission has further amended its said order of March 18, 1943 so as to shorten the notice period to 15 days, prior to the effective date of April 17, 1944. Your petitioners are advised that it is not the practice of

the Interstate Commerce Commission, in cases where its orders are sought to be set aside but where its orders are sustained by the District Court, to postpone the effective date of its orders pending the perfecting and determination of an appeal to the Supreme Court of the United States from the final decree of the District Court and therefore aver that the Commission would not grant such a postponement of the effective date of its order of March 18, 1943 if requested by petitioners so to do.

5. This case presents the novel question as to the extent of the power of the Interstate Commerce Commission to prescribe through routes which shorthaul one or more railroads without their consent under the 1940 amendments to Section 15 (4) of the Interstate Commerce Act (49 U. S. C. A. 15 (4)). As stated by this Court in its opinion herein this provision "has not heretofore been construed in any reported court decision, * * *." The point involved is of substantial importance to petitioners and to many other railroads in that upon its determination depends the scope and applicability of the limitation in Section 15 (4) on the Commission's authority to prescribe through routes under Section 15 (3) of the Interstate Commerce Act.

6. If petitioners, in compliance with the Commission's said order of March 18, 1943, as amended, were to comply therewith by establishment of the prescribed through routes, it might eventuate that the Supreme Court on appeal might hold the case moot. Petitioners are of the view that such compliance would not make the case moot, but it is possible that the matter might be determined otherwise [fol. 152] by the Supreme Court.

7. Although Section 15 (4) of the Interstate Commerce Act imposes limitations on the Commission's power to prescribe through routes found by it to be in the public interest, when such through routes would shorthaul a railroad without its consent, Section 15 (3) of the Act contains the following limitation on the right of railroads so short-hauled to eliminate such through routes when once established:

"If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto, or authorization by the Commission, is suspended by the Com-

mission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancellation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section."

If, therefore, the order of the Commission shall become effective and the through routes therein prescribed be established in compliance therewith, and if upon the appeal the Supreme Court of the United States finds that said order should be enjoined, petitioners might be unable to cancel or discontinue such through routes.

8. The present situation as respects the through routes available to the complainant before the Commission, which does not comprehend the through routes now prescribed, has long been in effect and has been regarded as lawful as attested by the decision of the Commission in *Stickell & Sons v. Western M. Ry. Co.*, 153 I. C. C. 759 (1929).

9. This Court has ample authority to grant the stay herein prayed.

Hovey v. McDonald, 109 U. S. 150, 161;
Cumberland Tel. Co. v. P. S. C. 260 U. S. 212, 219;
Virginian Ry. v. U. S. 272 U. S. 658, 668-672;
Beaumont, S. L. & W. Ry. v. U. S. 282 U. S. 74, 90;
Merchants' Warehouse Co. 1. U. S. 283 U. S. 501, 513;
 Civil Procedure Rule 62 (c).

[fol. 153] 10. In order to avoid any question as to whether, if a stay of the Commission's order is granted pending perfection and disposition of appeal, a bond for damages would fully indemnify intervenor-defendant, D. A. Stickell & Sons, Inc., for its consequent inability to secure in the interim the benefit of the basis of freight rates which would apply to the involved destinations on the Pennsylvania Railroad over the prescribed routes, and in order to afford to said intervenor-defendant during such period the same basis of freight rates on its traffic to such destinations as it would secure under the Commission's said order of March 18, 1943, if not so stayed, petitioner The Pennsylvania Railroad Company, one of the applicants herein, will undertake, and to that end will seek appropriate authority from the Interstate Commerce Commission, to file with the Commission tariff

schedules providing for the waiver by it, effective April 17, 1944, for one year and for any additional time required for the disposition of the appeal, of its out-of-route or back-haul charge of 4.5¢ per 100 pounds on said traffic. This will afford the Stickell Company, and any other members of the shipping public who could avail themselves of the prescribed through routes, the same basis of freight rates pending disposition of appeal as if the Commission's order were not stayed.

Wherefore, in view of the foregoing considerations and of the importance and novel character of the questions presented, and in order fully to protect their right of appeal, petitioners herein respectfully pray that this Court enter its order herein staying and suspending the aforesaid order of the Interstate Commerce Commission pending the perfecting and determination of their appeal to the Supreme Court.

[fol. 154] And your petitioners will ever pray, etc.

Wm. Pepper Constable, 1000 Maryland Trust Building, Baltimore 2, Md.; Francis R. Cross, Baltimore & Ohio Building, Baltimore 1, Md.; Joseph F. Eshelman, Broad Street Station Bldg., Philadelphia 4, Pa., Attorneys for Petitioners.

✓ Dated, Baltimore, Md., March 22nd, 1944.

[fol. 155] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER STAYING ORDER OF THE INTERSTATE COMMERCE COMMISSION—Filed March 22, 1944

The petitioners in the above-entitled proceeding, having applied to this Court for an order staying and suspending the operation and enforcement of the order of the Interstate Commerce Commission made on March 18, 1943, as amended, in the proceeding entitled Docket No. 28647, *D. A. Stickell and Sons, Inc. v. The Alton Railroad Company et al.*, pending the perfecting and determination of the appeal by said petitioners from the final decree, when entered, of this Court dismissing petitioners' petition for an injunction

restraining the operation and enforcement of said order, as so amended, and the petitioners having undertaken to waive, effective April 17, 1944, and pending disposition of appeal, the back-haul charge of The Pennsylvania Railroad Company on the traffic that under the Commission's said order would secure rates over the prescribed through routes not subject to back-haul charge, and the Court having considered the arguments of counsel and being fully advised in the premises;

It Is Ordered and Decreed, That, the aforesaid order of the Interstate Commerce Commission, as amended, and the operation and enforcement thereof, be and the same hereby are stayed and suspended pending the perfection and determination of petitioners' appeal to the Supreme Court of the United States from the said final decree of this Court when entered.

It Is Further Ordered and Decreed, That the requisite security for damages and costs on appeal be fixed in the sum of five thousand dollars (\$5000.00).

This 22nd day of March, 1944.

Morris A. Soper, United States Circuit Judge; William C. Coleman, United States District Judge; W. Calvin Chesnut, United States District Judge.

[fols. 157-158] Bond on stay for \$5,000.00 approved and filed March 22, 1944 omitted in printing.

[fol. 159] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed May 15, 1944

The Pennsylvania Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company, Charles M. Thomson, As Trustee of the Property of The Chicago and North Western Railway Company, a Corporation, Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees), Joseph B. Fleming and Aaron Colnon, Trustees of The Chicago, Rock Island and Pacific Railway Company, Louisville and Nashville Railroad Company, G. W. Webster and

Joseph Chapman, Trustees of Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Guy A. Thompson, [fol. 160] Trustee, Missouri Pacific Railroad Company, Debtor, The New York Central Railroad Company, The Pittsburgh and Lake Erie Railroad Company, Southern Railway Company, Wabash Railroad Company, Petitioners in the above-entitled case, feeling themselves aggrieved by the final decree of the District Court of the United States for the District of Maryland, entered in said Court on March 22, 1944, pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein they consider the decree erroneous are set forth in the Assignment of Errors accompanying this petition and to which reference is hereby made.

Said petitioners pray that a transcript of the record, proceedings, and papers on which said decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated May 15, 1944.

Wm. Pepper Constable, 1000 Maryland Trust Building, Baltimore 2, Md.; Francis R. Cross, Baltimore & Ohio Bldg., Baltimore, Md.; Joseph F. Eshelman, Broad St. Station Bldg., Philadelphia 4, Pa., Attorneys for Petitioners. H. C. Barron, Charles Clark, A. B. Enoch, P. F. Fault, Thomas P. Healy, H. H. Larimore, A. H. Lossow, W. A. Northcutt, L. H. Strasser, Carson L. Taylor, of Counsel.

[fol. 161] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed May 15, 1944

In the above-entitled cause, The Pennsylvania Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company, Charles M. Thomson, as Trustee of the Property of The Chicago and North Western Railway Company, a Corporation, Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees), Joseph B. Fleming and Aaron Colnon, Trustees of The Chicago, Rock Island and

Pacific Railway Company, Louisville and Nashville Railroad Company, G. W. Webster and Joseph Chapman, Trustees of Minneapolis, St. Paul & Sault Ste. Marie Rail- [fol. 162] way Company, Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, The New York Central Railroad Company, The Pittsburgh and Lake Erie Railroad Company, Southern Railway Company, Wabash Railroad Company, Petitioners, having made and filed a petition praying an appeal to the Supreme Court of the United States from the final decree of this Court in this cause entered on March 22, 1944, and having also made and filed an assignment of errors and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of Court in such case made and provided, it is

Ordered and Decreed that the appeal be, and the same is hereby allowed as prayed for.

Dated May 15, 1944.

William C. Coleman, United States District Judge.

[fols. 163-167] Citation in usual form showing service on Wendell Berge, et al. omitted in printing.

[fol. 168] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed May 15, 1944

To the Attorney General for the State of Maryland:

You are hereby notified that the District Court of the United States for the District of Maryland, on May 15, 1944, filed and entered an order allowing an appeal by the Pennsylvania Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company, Charles M. Thomson, As Trustee of the Property of The Chicago and North Western Railway Company, a Corporation, Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees), Joseph B. Fleming and Aaron Colnon, Trustees of The Chicago,

[fol. 169] Rock Island and Pacific Railway Company, Louisville and Nashville Railroad Company, G. W. Webster and Joseph Chapman, Trustees of Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, The New York Central Railroad Company, The Pittsburgh and Lake Erie Railroad Company, Southern Railway Company, Wabash Railroad Company, Petitioners, to the Supreme Court of the United States from a final decree filed and entered on the 22nd day of March, 1944, in the above-entitled cause, and that the citation signed by such Court on May 15, 1944, in connection with the order allowing such appeal, is made returnable within 40 days from the date of the signing of such citation.

Attached hereto are copies of each of the following documents: the citation referred to above, the petition for and the order allowing said appeal, petitioners' jurisdictional statement pursuant to Rule 12 of the Revised Rules of the Supreme Court of the United States, and the statement required to be served on appellees by said Rule 12.

This notice is given to you pursuant to the provisions of U. S. Code, Title 28, Sec. 47a, enacted March 3, 1911, c. 231, sec. 210, 36 Stat. 1150, as amended by the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 219, 220.

Dated May 15, 1944.

Wm. Pepper Constable, 1000 Maryland Trust Building, Baltimore 2, Md.; Francis R. Cross, Baltimore & Ohio Bldg., Baltimore, Md.; Joseph F. Eshelman, Broad St. Station Bldg., Philadelphia 4, Pa., Attorneys for Petitioners; H. C. Barron, Charles Clark, A. B. Enoch, P. F. Gault, Thomas P. Healy, H. H. Larimore, A. H. Lossow, W. A. Northcutt, L. H. Strasser, Carson L. Taylor, Of Counsel.

[fol. 170] Received a copy of the foregoing notice this 15th day of May, 1944.

William C. Walsh. Per Elsa J. Clarke. For the Attorney General of the State of Maryland.

[Title omitted]

ASSIGNMENT OF ERRORS—Filed May 15, 1944

Now come The Pennsylvania Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company, Charles M. Thomson, As Trustee of the Property of The Chicago and North Western Railway Company, A Corporation, Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees), Joseph B. Fleming and Aaron Colnon, Trustees of The Chicago, Rock Island and Pacific Railway Company, Louisville and Nashville Railroad Company, G. W. Webster and Joseph Chapman, Trustees of Minneapolis, [fol. 172] St. Paul & Sault Ste. Marie Railway Company, Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, The New York Central Railroad Company, The Pittsburgh and Lake Erie Railroad Company, Southern Railway Company, and Wabash Railroad Company, petitioners in the above-entitled cause, by their counsel and, in connection with their appeal, file the following Assignments of Error upon which they will rely on the prosecution of their appeal to the Supreme Court of the United States from the final decree of this Court entered March 22, 1944.

The District Court erred:

(1) In not setting aside, annulling, and enjoining the Commission's Order of March 18, 1943, involved in this case.

(2) In concluding and holding that the Commission correctly interpreted clause (b) of Section 15 (4) of the Interstate Commerce Act as amended; that the Commission applied said clause (b) in the present case in a manner supported by substantial evidence; and that such application violates no Constitutional rights of the petitioning carriers.

(3) In concluding, holding and decreeing that the said order of the Commission was within its statutory authority and was made upon substantial evidence and in accordance with applicable law, and is in all respects valid.

(4) In dismissing the petition.

(5) In failing to conclude and hold that the said order of March 18, 1943, is beyond the statutory power of the Commission in that, in violation of the provisions of Section 15 (4) of the Interstate Commerce Act, the Commission therein and thereby has required and does require one or more defendant railroads, including one or more of petitioners herein, without their consent, to participate in the prescribed new through routes, which embrace substantially less than the entire length of their several railroads and of any intermediate railroad operated in conjunction and [fol. 173] under a common management or control therewith, which lie between the termini of such through routes, and thereby to short-haul themselves, without having made a precedent and valid finding that the through routes prescribed are "needed in order to provide adequate, and more efficient or more economic transportation."

(6) In failing to conclude and hold that the Commission's order is arbitrary and without warrant in law in that the Commission's ultimate finding upon which it rests, while in the language of the statute is without support in and is contrary to the evidence and is not supported by necessary quasi-jurisdictional findings.

(7) In failing to conclude and hold that the Commission's order is arbitrary and without warrant in law in that in making it the Commission did not observe the essentials of a fair hearing and the requirements of due process, but disregarded defendants' uncontroverted evidence which was competent, relevant, and material to the issues before it, and made findings not supported by the evidence, but contrary to the evidence, all in violation of the Fifth Amendment to the Constitution of the United States.

(8) In failing to conclude and hold that the Commission's order is based on a mistake of law in that it is predicated on the erroneous conclusion that under clause (b) of Section 15 (4) of the Act the Commission can require through routes which short-haul one or more railroads without their consent where the existing routes provide adequate transportation and where the proposed routes cannot be operated more efficiently or more economically than existing routes.

(9) In failing to conclude and hold that clause (b) of Section 15 (4) of the Act relates to the service of transportation and not to the rates or charges therefor.

[fol. 174] (10) In failing to conclude and hold that the Commission's order is based upon a mistake of law in that it is predicated upon the erroneous conclusion that there was a burden of proof upon the railroads to show that the routes proposed would be less efficient or less economic than existing routes.

(11) In failing to conclude and hold that the Commission's order is based upon a mistake of law in that it rests upon the Commission's erroneous conclusion that clause (b) of Section 15 (4) of the Act contemplates a comparison of the adequacy of existing and proposed through routes.

(12) In failing to find that the Commission found that existing through routes were adequate and provide adequate transportation, and in failing to conclude and hold that, as a consequence, the Commission was not empowered to prescribe the new through routes which it has ordered, and which short-haul one or more railroads petitioners herein without their consent.

(13) In concluding and holding that the Commission did not find the existing through routes to be adequate.

(14) In failing to conclude and hold that the Commission's order is arbitrary and without warrant in law in that it rests upon a finding that the prescribed new through routes "are needed to provide adequate and more efficient and adequate and more economical transportation", although the uncontradicted evidence of record shows that the existing through routes provide adequate transportation and that the routes prescribed are less efficient and less economic of operation than the existing routes.

(15) In concluding and holding that the Commission's order is not in excess of its statutory authority, in that the Commission is not empowered to prescribe through routes to pass through a particular intermediate point for the sole purpose of enabling a transit operator thereat to perform [fol. 175] transit services under the joint rate from origin to destination.

(16) In failing to conclude and hold that the Commission's order is based upon a mistake of law and is beyond its statutory power in that the Commission has therein and thereby required one or more railroads petitioners herein, without their consent, to participate in new through routes which short-haul them, without having found, as a prerequisite, that the existing through routes do not provide adequate transportation between the termini thereof, and that the service of transportation between the termini can be performed more efficiently or more economically over the prescribed routes than over the existing routes.

(17) In failing to find that the Commission failed to make any finding as to the relative efficiency or economy of the proposed and existing routes from the standpoint of the railroads performing the transportation between the termini of the through routes.

(18) In concluding and holding, after having assumed "the correctness of the carriers' evidence that via the prescribed new routes the total elapsed time for shipments to move from origin to destination points would, generally speaking, be longer than over the existing routes", that the Commission properly disregarded such evidence on the ground that the only significant comparison as to efficiency under clause (b) in this case is of the routes from the intermediate transit point of Hagerstown to the destinations involved.

(19) In failing to conclude and hold that the Commission's findings comparing the existing routes via the Western Maryland through Hagerstown to other eastern destinations with the prescribed routes via Hagerstown to the destinations involved are without support in the record, and that such comparisons are not relevant to issues arising under clause (b) of Section 15 (4) of the Act.

[fol. 176] (20) In concluding and holding that the record supports the Commission's Findings of Fact as to the relative efficiency and economy of the prescribed and existing routes.

(21) In failing to conclude and hold that the Commission's findings with respect to the relative efficiency and economy of the prescribed and existing routes are not supported by the evidence.

(22) In failing to conclude and hold that the Commission's order is arbitrary and without warrant in law in that the ultimate finding of greater efficiency and greater economy on which it rests is without support in the evidence and is directly contrary to the evidence which shows that to typical destinations the service over the prescribed routes would be slower, and transportation thereover less economic, than over the existing routes.

(23) In failing to conclude and hold that the Commission's order is arbitrary and without warrant in law in that in prescribing the through routes via Fulton Junction the Commission, acting without support in the evidence and contrary to the evidence, found that the evidence does not show that the operating conditions at Fulton Junction are any more difficult than at Hagerstown.

(24) In concluding and holding that the Commission properly disregarded the railroads' evidence as to relative costs of transportation service over the proposed and existing routes and in failing to conclude that the Commission's stated reasons for disregarding such cost evidence were not supported by and were contrary to the record.

(25) In failing to find that the Commission's order is not supported by any finding that the proposed through routes are more economic of operation than the existing through routes.

[fol. 177] (26) In failing to conclude and hold that the Commission's order is based upon a mistake of law in that the Commission misinterpreted clause (b) of Section 15(4) of the Act as meaning "adequate and more efficient and more economic from the public's or shippers' as well as the participating carriers' standpoint."

(27) In failing to conclude and hold that the Commission's order is based upon a mistake of law in that the ultimate finding on which it rests—that the prescribed through routes "are needed to provide adequate and more efficient and adequate and more economical transportation"—is predicated upon the erroneous assumption that clause (b) of Section 15 (4) of the Interstate Commerce Act empowers the Commission to require railroads petitioners herein, without their consent, to participate in new through routes which short-haul them, upon a mere showing that

such routes will be more advantageous or will result in a lower rate to a transit operator situated between the termini of the through routes and without regard to whether such through routes will be more efficient or more economic of operation than existing through routes.

(28) In failing to conclude and hold that the Commission's order is based upon a mistake of law in that it rests upon the Commission's erroneous conclusion that clause (b) is operative to remove the short-hauling restriction of Section 15 (4) of the Act upon a mere finding by the Commission that the proposed through routes would be advantageous, and produce a lower rate or charge, to a shipper or a transit operator at an intermediate point thereon and without any finding that the proposed routes would be more efficient or more economic from a railroad standpoint.

(29) In concluding and holding that under clause (b) of Section 15 (4) of the Act the Commission is authorized to prescribe new through routes which short-haul a participating railroad without its consent where existing routes furnish adequate transportation but where the new route would be better or cheaper for a transit operator at an [fol. 178] intermediate point on such new route.

(30) In concluding and holding that the Commission considered the relative efficiency and economy of the prescribed and existing routes from the standpoint of the railroads as well as from the standpoint of the shipper, the transit operator at Hagerstown, and found the considerations in favor of the railroads to be subordinate to the considerations which favor the shipper.

(31) In failing to conclude and hold that the Commission's order is based upon a mistake of law and is beyond its statutory power in that the Commission has therein and thereby required one or more railroad petitioners herein, without their consent, to participate in new through routes which short-haul them, upon a mere finding that the prescribed through routes will be more efficient and more economic from the standpoint of a shipper, and without having found, as a prerequisite, that such through routes are needed in order to provide more efficient or more economic transportation from the standpoint of railroad operation.

(32) In failing to conclude and hold that, even if the Commission correctly interpreted clause (b) of Section 15 (4) of the Act, its order is arbitrary and without warrant in law in that it is not supported by evidence and findings that the proposed routes would be more efficient or more economic than existing routes from "the participating carriers' standpoint."

(33) In that, having interpreted clause (b) of Section 15(4) of the Act "to mean 'adequate, and more efficient or more economic transportation' from the shipper's as well as from the carrier's standpoint," and as including "also considerations of railroad operating efficiency and economy," it failed to conclude and hold that the Commission's order was arbitrary and without warrant in law by reason of the Commission's failure to make findings as to whether the through routes prescribed would be more efficient or more economic from a railroad operating standpoint.

[fol. 179] (34) In concluding and holding that clause (b) of Section 15(4) of the Act "must be interpreted to mean 'adequate, and more efficient or more economic transportation' from the shipper's as well as from the carrier's standpoint, and that, therefore, the Commission has authority under this clause, to consider and weigh the relative importance of all factors affecting both shipper and the carrier."

(35) In failing to conclude and hold that the Commission's order is based upon a mistake of law and is arbitrary in that its finding that the prescribed routes are needed to provide more efficient transportation is based upon a comparison of the existing all-rail through routes with a rail-truck route through Elsmere Junction, Del., and not with the through routes prescribed.

(36) In failing to conclude and hold that the Commission's order is arbitrary and without warrant in law, and without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, in that it is predicated upon ultimate findings as to adequacy, efficiency, and economy of through routes which rest not upon the evidence but upon an erroneous finding, itself without evidence, that The Pennsylvania Railroad Company, one of the defendants and a petitioner herein, failed to perform its duty under Section 3(4) of the Interstate Commerce Act

to afford all reasonable, proper, and equal facilities for the interchange of traffic with the Western Maryland Railway, although no issue under that section was presented or tried, and no notice was given of any such issue to be heard or determined.

(37) In failing to conclude and hold that the Commission's order is based upon a mistake of law in that in making the findings upon which it rests the Commission erroneously assumed that, in determining the relative efficiency and economy of proposed and existing routes, it might disregard evidence that the proposed routes involved [fol. 180] the use of interchange points not consistent with efficient and economic operation on the ground that any such inefficient or uneconomic operation would constitute a failure on the part of the railroads involved to perform their duty under Section 3(4) of the Act to afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines.

(38) In failing to conclude and hold that the Commission's order is arbitrary and without warrant in law in that it is based on the failure of the Commission to make findings on the uncontroverted evidence that the proposed routes via York and Fulton Junction would be less efficient and less economic of operation, by reason of the Commission's erroneous conclusion that it was entitled to disregard such evidence and to fail to make findings thereon because of the duty of railroads under Section 3(4) of the Act to afford all reasonable, proper, and equal facilities for the interchange of traffic with connecting carriers, although no issue under that section was presented or tried, or evidence adduced with respect thereto, and no notice was given of any such issue to be heard or determined.

(39) In failing to conclude and hold that the necessity under clause (b) for findings by the Commission as to the relative efficiency and economy of the proposed and existing routes from the standpoint of the railroads performing the transportation is not obviated by a finding of a violation of Section 3(4) of the Act where no issue was presented thereunder or hearing had or evidence presented with respect thereto.

(40) In concluding and holding that the Commission properly found a breach of duty under Section 3(4) of the

Interstate Commerce Act, and in failing to find that no issue was presented, or hearing had, or evidence adduced with respect thereto.

[fols. 181-228] Wherefore, petitioners pray that the said decree be reversed and that the Commission's said order be set aside, annulled, and enjoined.

Wm. Pepper Constable, 1000 Maryland Trust Building, Baltimore 2, Md.; Francis R. Cross, Baltimore & Ohio Bldg., Baltimore, Md.; Joseph F. Eshelman, Broad St. Station Bldg., Philadelphia 4, Pa. H. C. Barron, Charles Clark, A. B. Enoch, P. F. Gault, Thomas P. Healy, H. H. Larimore, A. H. Lossow, W. A. Northcutt, L. H. Strasser, Carson L. Taylor.

[fol. 229] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE OF PETITIONERS-APPELLANTS FOR TRANSCRIPT OF
RECORD—Filed May 15, 1944

To the Clerk of the Above Named Court:

You are hereby requested to prepare a transcript of the record in the above-entitled cause to be filed in the Supreme Court of the United States, pursuant to an appeal allowed therein, and to include in such transcript of record the following, to wit:

(1) Petition and Exhibits A, B, C, and D thereto, filed November 4, 1943;

(2) Intervention of Interstate Commerce Commission filed, December 17, 1943;

(3) Answer of Interstate Commerce Commission filed, December 17, 1943;

(4) Order of Court requiring respondent to show cause on 26 January 1944 at 10:00 A. M. why the application for an interlocutory injunction should not issue, filed December 27, 1943;

(5) Order of Court convening 3-Judge Statutory Court, filed December 27, 1943;

(6) Motion of D. A. Stickell & Sons, Inc., to intervene and Order of Court granting same, filed December 31, 1943; [fol. 230] (7) Answer of the United States of America, filed December 31, 1943;

(8) Answer of intervener, D. A. Stickell & Sons, Inc., filed January 7, 1944;

(9) Pages 1 to 11, inclusive, of the transcript of the Stenographers' notes of the hearing before the 3-Judge District Court at Baltimore, Md., on January 6, 1944, except that portion of the Argument which appears on the latter half of page 11 thereof;

(10) Certificate of Secretary of Interstate Commerce Commission dated November 2, 1943 (three pages), and documents and papers referred to in, and covered by, said certificate;

(11) Certificate of Secretary of Interstate Commerce Commission, dated November 2, 1943 (one page), and transcript of hearing before the said Commission and exhibits filed at said hearing referred to in, and covered by, said certificate;

(12) Certificate of Secretary of Interstate Commerce Commission, dated January 7, 1944, and Order of said Commission, Commissioner Porter, dated November 6, 1943, referred to in, and covered by, said certificate;

(13) Opinion of Court, filed March 2, 1944;

(14) Final decree dismissing the Complaint for want of equity at petitioners' costs, filed March 22, 1944;

(15) Application of petitioners for stay pending appeal, filed March 22, 1944;

(16) Order of Court that the Order of the Interstate Commerce Commission, as amended, and the operation and enforcement thereof, be stayed and suspended, pending the perfection of petitioners' appeal and fixing security for damages and costs on appeal in the sum of \$5,000.00, filed March 22, 1944;

[fol. 231] (17) Bond staying Order of Interstate Commerce Commission pending appeal, filed March 22, 1944;

(18) Petition for appeal;

(19) Order allowing appeal;

(20) Citation on appeal;

(21) Notice of appeal;

(22) Notice to Attorney General of State of Maryland and acknowledgment of service.

(23) Assignment of Errors;

(24) Jurisdictional statement by petitioners under Rule 12 of the revised rules of the Supreme Court of the United States;

(25) Statement by petitioners-appellants directing attention to Paragraph 3 of Rule 12 of the revised rules of the Supreme Court of the United States.

(26) Praecept of petitioners-appellants for transcript of record.

(27) Order of Judge Coleman, dated May 15, 1944, directing the Clerk to transmit original record to the Supreme Court of the United States.

(28) Cost bond on appeal.

(29) All docket entries in their appropriate order.

(30) All proofs of service.

Wm. Pepper Constable, 1000 Maryland Trust Building, Baltimore 2, Md; Francis R. Cross, Baltimore & Ohio Bldg., Baltimore, Md.; Joseph F. Eshelman, Broad St. Station Bldg., Philadelphia 4, Pa., Attorneys for Petitioners.

H. C. Barron, Charles Clark, A. B. Enoch, P. F. Gault, Thomas P. Healy, H. H. Larimore, A. H. Lossow, W. A. Northeutt, L. H. Strasser, Carson L. Taylor, of Counsel.

[fol. 232] Service of the foregoing praecipe for transcript of record and receipt of copy thereof are hereby acknowledged this 15th day of May, 1944.

Wendell Berge, Assistant Attorney General; Robert L. Pierce, Special Assistant to the Attorney General; Bernard J. Flynn, United States Attorney (for the United States of America); Daniel W. Knowlton, Chief Counsel; E. M. Reidy, Assistant Chief Counsel (for the Interstate Commerce Commission), ——— Attorneys for Intervener D. A. Stickell & Sons, Inc.

[fol. 233] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER AS TO EXHIBITS—Filed May 15, 1944

In accordance with the provisions of the praecipe of petitioners-appellants for transcript of record on appeal

of the above entitled matter to the Supreme Court of the United States, and good cause appearing therefor,

It is hereby ordered, that the documents and papers covered by the three certificates of the Secretary of the Interstate Commerce Commission, and transmitted with said certificates in Docket No. 28647, *D. A. Stickell & Sons, Inc. v. The Alton Railroad Company, et al.*, all of which documents and papers were received in evidence in this Court in the trial of this cause, may all be forwarded, in lieu of copies of such documents and papers, to the Clerk of the Supreme Court of the United States as a part of the transcript of the record on appeal herein.

Dated this 15th day of May, 1944.

William C. Coleman, United States District Judge.

[fol. 234] Service of a copy of the above Order As To Exhibits and receipt of a copy thereof is hereby acknowledged this 15th day of May, 1944.

Wendell Berge, Assistant Attorney General; Robert L. Pierce, Special Assistant to the Attorney General; Bernard J. Flynn, United States Attorney (for the United States of America); Daniel W. Knowlton, Chief Counsel; E. M. Reidy, Assistant Chief Counsel (for the Interstate Commerce Commission), ——— Attorneys for Intervener D. A. Stickell & Sons, Inc.

[fols. 235-237] Cost Bond on Appeal for \$250.00 approved and filed May 15, 1944 omitted in printing.

[fol. 238] Clerk's Certificates to transcript omitted in printing.

[fol. 239] EXHIBIT IN EVIDENCE

• • • • •

[fols. 240-242] Secretary's Certificate to following transcript omitted in printing.

[fols. 243-250] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 28647

D. A. STICKELL & SONS, INC., Complainant,

vs.

THE ALTON RAILROAD COMPANY, ETC., Defendants

COMPLAINT—Filed April 19, 1941 Omitted. Printed side page, 34 ante

[fols. 251-278a] INTERSTATE COMMERCE COMMISSION

Washington

No. 28647

D. A. STICKELL & SONS, INC.

vs.

THE ALTON RAILROAD COMPANY, ET AL

ORDER—April 17, 1941

Herewith is a copy of a complaint filed with the Interstate Commerce Commission in the above-entitled case.

Defendants are hereby called upon to satisfy the complaint or to answer the same in writing within twenty days from this date.

By the Commission:

W. P. Bartel, Secretary.

[fol. 279] BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket 28647

[Title omitted]

PETITION OF ALLIED MILLS, INC. FOR LEAVE TO INTERVENE—
Received at Hearing Sept. 10, 1941

[fol. 280] Comes Now your petitioner, Allied Mills, Inc. and respectfully represents that they have an interest in the above entitled proceedings and desire to intervene in and

become a party to said proceedings, and as grounds for the proposed intervention say:

I. That the Allied Mills, Inc., is a corporation existing under the laws of the State of Indiana with principal offices in the City of Fort Wayne, Indiana and whose principal business is the buying of raw materials, consisting mainly of grain and grain products, the manufacture and distribution of mixed livestock feed for animals and poultry, and the shipping of same in interstate and intrastate commerce.

II. That the complainant in the above entitled proceedings brings into issue under an allegation of unreasonableness and "other provisions" of the Act, the rates and charges for the transportation of grain and grain products from points in Western Trunk Line and Central Freight Association territories, milled and mixed into products at Hagerstown under in-transit arrangements, and destined to points in Trunk Line and New England territories; and specifically seeks the establishment of through routes and joint rates via Hagerstown to destinations on the Pennsylvania Railroad without payment of a back-haul charge.

[fol. 281] III. That your petitioner operates mixed feed manufacturing plants at Buffalo, New York and Portsmouth, Virginia for the purpose of supplying its customers in the destination territory indicated in this complaint.

IV. That the rates, routes and all transportation conditions surrounding the movement of grain and its products, including mixed livestock feed for animals and poultry, from and to the origins involved in this complaint are matters of grave importance to your petitioner.

Wherefore, said Allied Mills, Inc., prays leave to intervene in the above entitled proceedings and to be treated as a party hereto.

Respectfully submitted, Allied Mills, Inc., by (Signed)
R. V. Craig, Practitioner.

Dated at Chicago, Illinois, July 29, 1941.

[fols. 282-283] *Duly sworn to by John B. DeHaven. Jurat omitted in printing.*

[fols. 284-295]

[Title omitted]

REPORT OF THE COMMISSION—March 18, 1943. Omitted.
Printed side page 42 ante

[fols. 296-301] CORRECTED ORDER—March 18, 1943. Omitted.
Printed side pages 61 ante

[fol. 302] BEFORE THE INTERSTATE COMMERCE COMMISSION
No. 28647

[Title omitted]

PETITION OF DEFENDANTS * FOR REARGUMENT AND RECON-
SIDERATION AND FOR POSTPONEMENT OF THE EFFECTIVE DATE
OF THE ORDER—Filed May 24, 1943

Comes now defendants * and respectfully petition the Commission for reargument and reconsideration of the report and order made and entered in this proceeding by [fol. 303] the Commission, Division 2, on March 18, 1943, and for the stay or postponement of said order pending disposition of the matter by the Commission pursuant to the provisions of Section 17(8) of the Act, and in support thereof respectfully represent as follows:

I. The Commission Should Grant Reargument and Recon-
sideration

A. The Case Is One of Substantial Importance

1. Affirmance of the decision might establish a precedent disruptive of the existing structure of rates and routes with resulting depletion of carrier revenues.

All defendants on whose behalf this petition is submitted are seriously concerned by the implications of the decision

* The Western Maryland Railway Company did not appear in the case and neither supports or opposes the complaint. The term "defendants," except as otherwise indicated, will refer to defendants other than the Western Maryland Railway Company.

of Division 2 in this case. There can be no doubt but that, if its decision should stand and have the approval of the Commission, the carriers throughout the East would be besieged with demands, and the Commission with complaints, for the establishment of whatever new through routes might be necessary to pass through transit points, now subject to back-haul or out-of-line charges, so as to enable them to avoid such charges.

[fol. 304] The grain rates, and particularly the reshipping rates from the rate-break points, are on a depressed basis, and the routes via which transit is now available have been determined upon with a view to the more economical methods of operation and the preservation of carrier revenues from depletion due to unnecessary expense for multiple interchanges which would be attendant upon the operation of multiple-line routes.

The report of the Division brusquely puts aside any consideration of the injurious effect upon the rate structure and carrier revenues of the establishment of the precedent which its decision would seem to represent. Presumably this was due to what it regarded as the background of the proceeding. Thus, in an earlier proceeding brought by this same complainant, *Stickell & Sons v. W. M. Ry. Co.*, 146 I. C. C. 609 (1928), the Commission, Division 4, found routes similar to those here required desirable in the public interest. The report of the Commission on further hearing in that case, *Stickell & Sons v. W. M. Ry. Co.*, 153 I. C. C. 759, while holding that it was without power to require the establishment of additional through routes via Hagerstown which would short-haul certain defendants as delivering carriers, did not confirm the Division's finding of necessity and desirability in the public interest.

These defendants are of the impression that the Division's decision proceeds on the erroneous assumption that the facts of that case, herein termed the first *Stickell case*, are parallel to those here of record, and that in view of the amendment of Section 15(4) of the Act, the Commission should follow its earlier finding with respect to the necessity and desirability of such additional routes.

The record and findings of fact in the first *Stickell case* are not of record here. If one may judge from the facts set forth in those decisions, the present record is substantially different, in that it contains a full and thorough exposition

and explanation of the entire structure of routes and rates under present conditions, and is of more extended scope than the evidence in the earlier case. But further than this, the present record contains significant evidence of relative costs of service over existing and proposed routes for which there was no counterpart in the earlier record, and which is of especial significance in view of the present state of the law.

If affirmance of the precedent of the Division's decision herein would logically lead to a disruption of the existing structure of rates and routes on the traffic involved in Eastern territory, then the Commission ought not to affirm the decision without a clear understanding of its consequences and without intending those results.

[fol. 306] 2. The case is one of initial impression as regards the interpretation of amended Section 15(4).

The interpretation which the Division's report gives to amended Section 15(4) would emasculate the limitation set forth in clause (b) thereof. As will hereinafter be set forth more at length, the reference to more efficient or more economic transportation, contained in that clause, related to efficiency and economy of *operation*. Yet the report of the Division would make this limitation of no effect if, despite no showing of greater efficiency and economy of operation, the proposed routes were shown to be more advantageous or economical from the standpoint of the charges to the *shipper*.

If the Division is correct in this interpretation, then it would seem to follow inevitably that any transit operator now subject to a back-haul or out-of-line charge could secure the establishment of through routes via his station which would not entail a back-haul, and thereby override the carrier's non-consent to be short-hauled, by showing that this would be to his financial advantage. In such cases the limitation which the carriers thought they were obtaining and which the Congress thought it was providing, would have vanished into thin air.

[fol. 307] Since the point of law here presented has never been decided, and since the interpretation to be placed on the amended provision is of importance to rail carriers generally, the case is one which should have the consideration of the entire Commission.

3. Because of the importance of the case the Commission's findings ought to be made to conform to the record.

Aside from its erroneous interpretation of amended Section 15(4), the findings in the decision of Division 2 in numerous respects lack support in the record or are contrary to the record. With but slight changes the report of the Division is the proposed report of the Examiner. Because the proposed report failed to contain findings responsive to the facts of record and, contrariwise, included findings unsupported by the record, these defendants took numerous exceptions thereto. Since the report of the Division appears largely to have ignored these exceptions, and since defendants believe that an examination of the record will and should require a more or less complete revision of the fact findings in such report, these defendants ask the Commission to make the appropriate corrections. As of possible convenience in connection therewith, the defendants in the following pages have drawn freely [fol. 308] from the material in such exceptions, dealing with such matters of fact in the order of their treatment in the report rather than according to a topical arrangement.

B. The Report of the Division Is Not Supported by the Record, But Is Contrary to the Record

1. The report is in error as not stating the position of defendants herein.

The report of the Division fails to make clear the position of the defendant carriers with respect to the routes sought by complainant. A reading of the report would indicate that only the Baltimore & Ohio and the Pennsylvania are opposing the establishment of the through routes sought. This is incorrect. All carriers here defendant, except the Western Maryland, oppose the prescription of the routes sought, and the report should have so found. Thus, all carriers defendant other than the Western Maryland made common cause in opposing the complaint herein and appeared by a committee of counsel in opposition to the complaint (3).^{*} The testimony and exhibits dealing particularly with the situation from the standpoint of the ori-

^{*} Except where preceded by "Ex." to designate an exhibit, figures in parentheses, except as otherwise indicated, refer to pages of the transcript of record.

gin territory, both Central territory and west thereof, [fol. 309] was introduced through Witness Heimert, Chairman of the Defense Committee of the Central Freight Association defendant lines (72 ff). The testimony and exhibits of witnesses Beggs, Thornton, and Clark were likewise presented in support of the case of all defendants except the Western Maryland. The latter did not appear at the hearing or on brief and neither supports nor opposes the complaint.

These defendants ask that in lieu of the last sentence of the third paragraph on Sheet 1 of the mimeographed report the following finding be substituted:

"All carriers named in the complaint as defendants, except the Western Maryland Railway Company, appeared by a committee of counsel and united in opposing the prescription of the routes sought. To sustain their defense these carriers, herein for convenience termed 'defendants,' called as witnesses traffic officers of the Central Freight Association and the Baltimore & Ohio and Pennsylvania railroads, and an operating officer of the latter railroad."

2. The findings are inaccurate as to the weight of complainant's shipments.

In the first paragraph at Sheet 2 of the mimeographed report the following statements appear:

[fol. 310] "Complainant estimates the average loading of its inbound shipments at 72,000 to 80,000 pounds and of its outbound shipments as 46,000 pounds. The Pennsylvania shows that 217 inbound cars handled by it during May, June, and July 1940 averaged 66,044 pounds and that 383 outbound cars handled by it during the period from December 1940 to May 1941 averaged 49,000 pounds."

The foregoing findings contain two inaccuracies. The figure 72,000 pounds should be 76,000 pounds, and the figure 49,000 pounds should be 49,200 pounds (40, 41, 116, 155, 156).

3. The report erroneously fails to find that the Pennsylvania established transit at complainant's request.

The report is in error in that it fails to include in connection with the third complete paragraph on Sheet 3, preferably at the end thereof, a finding substantially as follows:

"The Pennsylvania established the transit arrangement at Hagerstown at the request and for the use of complainant, and its absorption of the Western Maryland switching charge was undertaken voluntarily, although the Commission previously, in *Stickell & Sons v. Pennsylvania R. Co.*, 151 I. C. C. 364 and 156 I. C. C. 373, had found its earlier failure to absorb such [fol. 311] switching charges on transit shipments at Hagerstown not unreasonable or unduly prejudicial."

In support of the proposed finding see Record page 119 and Exhibit 45, page 2.

4. The report is incomplete and inadequate in its failure to find that the avoidance of the back-haul charge is the real objective of the complaint.

The last paragraph at Sheet 3 of the mimeographed report begins with the following statement:

"Complainant does not assail the reasonableness of the through rates, the out-of-line charge, or the transit charge."

While the statement is correct in its reference to the through routes and the transit charge, some further reference to the out-of-line charge is necessary to reflect the record, to prevent a misapprehension, and to convey a correct idea as to the essential nature of the controversy. The fact is that if it were not for the existence of the out-of-line charge, which applies when traffic is handled over the Pennsylvania's route through Enola, the present case would not arise. Had it been deemed practicable to eliminate the back-haul charge there would not be any complaint of the alleged inadequacy of the Pennsylvania's route to [fol. 312] or from Hagerstown. That this is a correct conclusion is confirmed by an admission of counsel for complainant in response to a question of the Examiner in the course of a colloquy at page 97, as follows:

"Exam. Berry:—No. What he is asking is—what he is asking is a through route to make it directly intermediate.

"Mr. Eshelman:—I won't argue with you. I think it comes to the same thing.

"Exam. Berry:—So as to wipe out the back-haul charge. Isn't that what you are asking for?

"Mr. Hillyer:—That is it."

The above-quoted finding should therefore be amended in substance as follows:

"Complainant does not assail the reasonableness of the through rates or the transit charge or of the out-of-line charge as such, but the record supports the conclusion that if the out-of-line charge were eliminated the essential basis for the complaint would be removed."

5. The report fails to reflect the record concerning the situation of complainant in relation to that of other transit operators in the same territory.

The second complete paragraph of Sheet 4 of the report [fol. 313] begins with the statement that "The Baltimore & Ohio and Pennsylvania contend" that complainant is at no substantial disadvantage, etc. Aside from the fact that the reference should not be to the Baltimore & Ohio and Pennsylvania, but to *all* defendants other than the Western Maryland, the findings contained in the paragraph err in that they fail to reflect the facts shown of record, and summarized at pages 15-26 of Defendants' Brief, to the effect that complainant is in no different situation with respect to rates and routes than millers generally in Trunk Line territory, and is at no disadvantage as compared with such transit operators. These defendants ask that in connection with this paragraph the Commission make a finding substantially as follows:

"Complainant has available to it a comprehensive line of routes which enable it to draw grain and grain products from western trunk line territory and from practically all of central territory for transit at Hagerstown and for shipment beyond to an extensive destination territory in the East, including New England, without out-of-route charges. In addition, it has available, subject to small back-haul charges, a considerable additional destination territory. Complainant's

situation with respect to the applicability of back-haul charges in reaching certain destinations in trunk line [fol. 314] territory is not different in principle from that which obtains generally with respect to other transit operators in trunk line territory. In practice, however, complainant has numerous advantages over many other such transit operators in trunk line territory in that it can reach at a small back-haul charge a considerable destination territory to which they would be subject to higher back-haul charges or to a combination of rates. There is no allegation or showing of undue prejudice."

6. The report errs in its conclusions with respect to the extent that the public interest demands equalization of rates.

In the third complete paragraph at Sheet 4 of the report, the following statement appears:

"The public interest demands that all shippers be accorded relatively equal opportunities to reach all reasonably available markets."

But the report is incomplete and unresponsive to the facts of record in that it fails to state the limitations which are here necessary to be observed. Thus, the carriers are not obligated to accord equal rates to all shippers regardless of their relative locations and regardless of the relative services to be performed in serving them. This point is expressed in the well-founded principle that carriers are [fol. 315] not bound to relieve a shipper from its unfavorable location by an adjustment of transportation charges.* These defendants ask that for the above-quoted sentence there be substituted the following:

"The public interest demands that all shippers similarly situated be accorded relatively equal opportunities to reach all reasonably available markets, but it would be contrary to the public interest to adopt a policy of requiring the establishment of additional through routes which would entail a greater physical

* See for example *Quimby v. Maine Central R. R. Co.*, 13 I. C. C. 246, 248; *Flory Milling Co. v. C. N. E. Ry. Co.*, 93 I. C. C. 129, 134

service, by reason of increased multiple-hauls, with consequent increased expense of operation, merely for the purpose of affording transit operators in the territory between the origin and destination the intermediate application of joint rates over such through routes."

7. The report is contrary to the record in finding that complainant is at a disadvantage as compared with feed manufacturers at other points.

In the latter part of the third complete paragraph at Sheet 4 of the report there are findings to the effect that complainant is at a disadvantage as compared with other [fol. 316] feed manufacturers, chiefly at more western points, in reaching the destinations to which through routes are here sought. The report fails, however, to compare complainant's situation with that of millers generally, and fails to recognize the differences in the situation at Hagerstown and the compared points. The principal rate-break points and Buffalo, Fort Wayne, Indianapolis, Cincinnati, Toledo, Cleveland, Akron, and Pittsburgh are all served by direct lines of the Pennsylvania to the East, and it is therefore entirely appropriate that feed manufacturers at such points should be able to reach eastern destinations on the Pennsylvania at the through rates. But the fact that the destination territory in which complainant can market its products at the flat rates is not equally wide does not connote prejudice to it. The fact is that transit operators in or near the origin territory have a more restricted source of supply, but a wider destination territory, while transit operators in or near the points of destination have a wider source from which to obtain their inbound materials and a somewhat less extensive territory within which to market their products. This is a natural consequence of the difference in location. Feed manufacturers at eastern points, such as complainant, have an advantage over their more western competitors in that they are able on shorter notice [fol. 317] to make deliveries of their mixed feed at eastern points of consumption (18).

The superficial character of the comparison and unsound nature of the conclusion based thereon further appear from the fact that transit operators at such more western points are at no advantage as compared with Hagerstown in milling grain originating at intermediate points, but

on the contrary are at a disadvantage. This is shown by Exhibit 54 wherein comparison is made of the rates on grain originating at such Ohio points as Cleveland, Lima, Dover, and Mansfield and destined to typical eastern points on the Pennsylvania when transited at Hagerstown (using the P. R. R. route) as compared with transit at Fort Wayne, Ind., and at Akron, Toledo, and Circleville, Ohio. In each instance the base rates applied were the same regardless of where transited because the origin and the destination was the same, but while the out-of-route mileage was generally greater in the case of Hagerstown, its back-haul charge was uniformly less. It therefore definitely appears that Hagerstown is not at a disadvantage as to grain originating in the intermediate territory. But more than this is the fact that Hagerstown can draw grain from all of the same origins and market it in the large destination territory available to it without back-haul charge, although [fol. 318] such C. F. A. competitors in the same instances would be subject to back-haul charges.

Of the transit points here named in the proposed report only Lancaster and York are at all comparable with Hagerstown. But even here the comparison is not a proper one. In the first place, in so far as Lancaster and York are on direct routes to eastern destinations on the Pennsylvania, the situation of Hagerstown, which is on a branch of the Pennsylvania, is not comparable, but it is comparable with such branch-line transit points on the Pennsylvania as Bedford, Dillsburg, Elizabethville, Greencastle, Littlestown, Reading, Reedsville, Schuyler, and South Danville, Pa., and Cumberland and Frederick, Md., and Norfolk, Va. Complete comparisons are made as between these points and Hagerstown in Exhibit 47, and as will appear therefrom Hagerstown is not at a disadvantage in competing with transit operators at such points in the marketing of grain products in the destination territory involved. Of similar import is the comparison as between Hagerstown on the one hand, and the transit points of Cambridge, Md., and Norfolk on the other hand, in supplying markets on the Eastern Shore. These comparisons are set forth in Exhibit 50.

If comparison is made as between Hagerstown and other transit points served by the Pennsylvania which also require an out-of-route haul in marketing grain

on certain eastern lines other than the Pennsylvania, it will be found that Hagerstown already possesses a definite advantage. This appears from Exhibit 56. As there shown grain from Chicago transited at Bedford, Greencastle, or Littlestown, Pa., when destined to eastern points on the Central Railroad of New Jersey, the Delaware & Hudson, the Long Island, the Reading, and the Staten Island Rapid Transit railroads, is subject generally to an out-of-route charge ranging from 3 to 6 cents per 100 pounds, although when transited at Hagerstown there are routes in connection with the Western Maryland to the same destinations at the flat rate without the addition of out-of-route charges. Exhibit 57, which is a similar exhibit dealing with grain received at Wilmington, Del., over the Pennsylvania, discloses that shipments there transited would be subject to a combination of rates if forwarded to points on the Central Railroad of New Jersey or the Delaware & Hudson, and to an out-of-route charge of 9 cents if forwarded to destinations on the Reading there shown, although Hagerstown enjoys the flat rate to the same destinations over existing routes in connection with the Western Maryland.

In the second place, if comparison is made of Hagerstown, not as a branch-line point on the Pennsylvania, but [fol. 320] as a point on a through line of *another* railroad to the east, then the appropriate comparison is not with Lancaster and York, but with such transit points on through lines of *other* eastern carriers, as Geneva, N. Y., on the New York Central, Spencer, N. Y., on the Lehigh Valley, Horseheads, N. Y., on the Erie, Waverly, N. Y., on the Lackawanna, and Linfield, Pa., on the Reading. As shown in Exhibit 55, the through grain rates from Chicago to the East do not apply through these and similarly located transit points on other lines to local eastern destinations on the Pennsylvania, but such movements via those transit points would be at the higher combination basis (151-160). In the case of the five transit points named the percentage of circuitry to Salisbury, Md., would range only from 11.64 to 21.95 per cent. and to Jamesburg, N. J., only from 6.58 to 20.32 per cent. Of the 108 illustrations shown in the exhibit to the four typical Pennsylvania destinations, over 57 per cent involve a circuitry not in excess of 25 per cent. Thus, if the Commission should affirm the validity of the principle for which complainant contends, and should pre-

scribe through routes from the west to local destinations on the Pennsylvania in such manner as to make Hagerstown as a transit point on the Western Maryland intermediate to such destinations, and only for the purpose of permitting [fol. 321] transit thereat on the through rates, then it would seem that the same principle could be urged by the millers at such other eastern transit points to justify demands for the establishment of similar through rates on which they could reach the same Pennsylvania destinations at the flat rates.

In general, eastern transit points on the lines of one carrier do not have through routes on grain from the West to destinations on the lines of other carriers, particularly where the latter have their own routes from the West. Thus, grain received over the Pennsylvania and transited at York or Lancaster does not enjoy the through rates to eastern destinations on the Baltimore & Ohio, the New York Central, or the Erie (192-198).

For the foregoing reasons the findings above indicated at Sheet 4 of the report are inappropriate, erroneous, and contrary to the record. In their place the Commission should substitute a finding in substance as follows:

"Complainant refers to the fact that feed manufacturers at rate-break points and points in central territory served by direct lines of the Pennsylvania can reach eastern destinations on the lines of the latter at the through rates, while complainant on grain purchased at the same origins must pay a back-haul charge of 90 cents a ton in addition in marketing at the same [fol. 322] destinations. This, however, is a comparison of unlike matters. Thus, it is an inherent characteristic of the grain rate structure that transit operators in or near the origin territory have a narrower field from which to draw their grain, but a wide choice of markets, while transit operators in or near the destination territory can draw grain from a more extensive area, but have a less extensive choice of markets. But further than this, complainant as an eastern feed manufacturer has an advantage over similar manufacturers of mixed feeds in central territory and west thereof in that it can make deliveries more quickly, and this the record shows to be of some importance in the trade. The situation of complainant

is not different in principle from that of other eastern millers in that as a general rule such millers on the line of one railroad do not enjoy the use of the flat through rates in marketing their products at points on the lines of other carriers having their own routes from the West. In practice, however, complainant by reason of its situation has available to it a large and important destination territory which it can reach via the Western Maryland and its connections over which the joint rates apply, and in addition can reach a substantial consuming territory on the lines of the Pennsylvania and Baltimore & Ohio at small out-of-route charges. In the latter respect Hagerstown is in the same situation as transit points on branch lines of the Pennsylvania, such as Bedford, Greencastle, and Littlestown, [fol. 323] which likewise are subject to back-haul charges in reaching eastern destinations on the Pennsylvania. That the existing rate adjustment has not interfered with the free movement of complainant's products to destinations on the Pennsylvania appears from the fact that over a period of several years its tonnage in and out over the Pennsylvania has steadily increased (Ex. 60). The record requires the conclusion that complainant, as respects the markets available to it, is not at a disadvantage as compared with eastern millers generally, but on the contrary, has a more favorable rate basis than some similarly situated."

8. The Report is in error in failing to contain findings as to the effect on the rate structure of a logical and equal extension of the principle for which complainant contends.

The last paragraph of Sheet 4 of the Division's report begins as follows:

"The Baltimore & Ohio and Pennsylvania contend that a 'logical and equal extension of the principle' here involved would result in wasteful cross-hauling, 'seriously affect the entire structure of rates on grain and grain products subject to transit in trunk-line territory,' and materially reduce their revenues received [fol. 324] from out-of-line hauls. It is not necessary to determine here whether defendants apprehensions are well founded. It will suffice to say that even if they were,

that would be no reason for denying complainant just and reasonable through routes at the established joint rates."

Aside from the error of the report in referring to the Baltimore & Ohio and the Pennsylvania instead of *all* defendants other than Western Maryland, the report is seriously in error in failing to contain a definite finding as to the effect of a logical and equal extension of the principle here contended for by complainant. Thus, complainant contends that the Commission should establish such additional through routes via eastern transit points as may be necessary to enable transit operators at such points to market their products at points on other lines in that territory at the flat through rates, even though existing routes from the origins to such destinations are more direct, and the proposed routes would involve the services of more railroads. There can be no question but that the general application of such a principle would bring about a complete change in the structure of through routes and joint rates on grain as affects trunk line territory with resulting cross-hauling [fol. 325] and increased expense of operation by reason of the establishment of routes requiring the services of a greater number of carriers. If a logical and equal extension of the action which the complainant here seeks would bring about such a readjustment with its increased burden of expense upon the carriers, then the Commission should not enter upon such action blindly or say as does the report that "It is not necessary to determine here whether defendants' apprehensions are well-founded." If the Commission is prepared to find that it can consistently require the routes sought by complainant without bringing about such an undesirable and unjustifiable result, then it should state the reasons which differentiate the situations.

In this connection it is most significant that the proposed report makes no reference whatsoever to the intervention of Allied Mills, Inc., which has a mixed feed manufacturing plant at Portsmouth, Va., in the Norfolk district, from which it supplies its customers on the Eastern Shore.

This intervener receives inbound grain and milled products over the Pennsylvania, and in marketing its products on the Eastern Shore is subject to back-haul charges not less in any instance, and greater in some instances, than the back-haul charge applicable via Hagerstown to the

[fol. 326] same destination. If the decision of the Division stands, the Portsmouth intervener would undoubtedly ask the establishment of the flat rate from Chicago over routes in connection with the Chesapeake & Ohio, the Norfolk & Western, or the Virginian and thence via the Pennsylvania to Eastern Shore points (19, 28-30, 131, 140-141; Ex 55). Since competing feed manufacturers are fully aware of the significance of the principle which complainant here seeks to establish, the Commission would not be justified in shutting its eyes to the consequences of the action complainant urges upon it. On the contrary, it should fairly face the issue and take the whole situation into account in determining whether what complainant asks would be in the public interest.

For these reasons it is particularly amazing to find in the report the statement that even if defendants' apprehensions were well founded, "that would be no reason for denying complainant just and reasonable through routes at the established joint rates." The essential vice of such reasoning is that it *assumes* that the through routes sought are necessary and desirable in the public interest, although that is a matter which complainant has the burden to prove, and upon that assumption refuses to consider the effect of [fol. 327] the proposed action, whereas a judicial approach would suggest, as indeed the statute requires, that the logical consequences of such a requirement be taken into consideration in determining *whether* the through routes sought are necessary or desirable in the public interest.

These defendants therefore ask that the above-quoted language be stricken from the report and that there be substituted therefor a finding substantially as follows:

"In essence complainant's contention is that the Commission should establish such additional through routes via eastern transit points as may be necessary to enable transit operators at such points to market their products at points on other lines in that territory at the flat through rates, even though existing routes from the origins to such destinations are more direct, and the proposed routes would involve the services of more railroads. The general application of such a principle would bring about a complete change in the structure of through routes and joint rates on grain as affects trunk line territory with resulting

cross-hauling and increased expense of operation. Since the public ultimately pays the transportation bill, these facts necessarily bear upon the question as to whether the through routes sought have been shown to be necessary or desirable in the public interest."

[fol. 328] 9. The report is in error in improperly accepting statements in the first *Stickell case* as facts in this case which the record herein disallows.

Beginning at line 4 of sheet 5 of the report the following statement appears:

"The routes sought up to Hagerstown are well established and generally accepted as reasonable by shippers and the carriers parties thereto to points in eastern territory. There is no showing or contention that those routes would be less economical as parts of the through routes sought to destinations considered on the Pennsylvania than to destinations on the other carriers in eastern territory."

The foregoing statements are not based upon anything in this record, but upon the following statements contained in the report of the Division in the first *Stickell case*, 146 I. C. C. 609, at page 615:

"The Pittsburgh Dispatch is a well-established freight route maintained by the New York Central system, the Pittsburgh & Lake Erie being part of that system, in connection with the Western Maryland and the latter's connections. It now operates via Hagerstown, as has already been shown, to various destinations on the [fol. 329] Reading, Central of New Jersey, and their connections. There is nothing of record to indicate that it would be less economical to the destinations proposed and routes 1 and 2 than to the destinations now available."

These statements cannot be taken as statements of fact in this case, not only for the reason that they are not here of record, but also because the instant record shows largely to the contrary, particularly in respect of the relative economy of the existing and proposed routes. The quotation does show, however, that the reference to routes being "well-established" refers only to the Pittsburgh Dispatch

route and not to the Wabash route, and indicates that it has reference to existing routes in connection with the Reading and Central of New Jersey which would operate through Shippensburg, rather than through York or Fulton Junction.

The improper borrowing of these statements from the decision in the first *Stickell case* and the blind acceptance of them, is clearly erroneous. Thus, there is nothing in the law which makes relevant or material a comparison of the relative economy, for example, of the Pittsburgh Dispatch route via Hagerstown to destinations on the Reading or Central of New Jersey with proposed routes consisting of the same carriers up to Hagerstown and thence over the [fol. 330] Western Maryland to York or Fulton Junction and the Pennsylvania beyond. The proper comparison would be between the routes sought and existing routes over the direct line of the Pennsylvania. But aside from this, the theory of this statement in the report is in error as assuming to put a burden upon defendants to establish that a proposed route is less economical than an existing route. The burden is upon *complainant* to prove the contrary. But aside from these legal considerations, the propriety of the statements is in question as a matter of fact by reason of the testimony of Witness Clark as to the unusual quantum of operating service necessary to be expended in connection with the handling of traffic via York or Fulton Junction (227-235; Ex. 67).

For reasons indicated these defendants ask that the finding above quoted be stricken from the report.

10. The report is in error with respect to the relative economy of the routes via Hagerstown.

At Sheet 5 of the mimeographed report, in lines 10-17, the following findings appear:

“The routes sought in connection with the Pennsylvania would not only not result in any cross-hauling or wasteful transportation, but they would eliminate a [fol. 331] 149 mile out-of-line haul and two switching interchanges at Hagerstown and would relieve the Pennsylvania from the expense of maintaining transit and absorbing the switching charges at Hagerstown. The Western Maryland would bear all the transit and switching expenses at that point.”

These findings are not only without support on the record, but are contrary to the record.

In the first place, from rate-break points, common points, or local points served by it, the route of the Pennsylvania would furnish a *single-line haul* therefrom, while the required routes 1 and 2* would involve the services of *four* and *five* railroads, respectively. A similar situation would obtain in respect of hauls from points on connections of these several lines. In every instance the route sought would involve the services of several carriers more than required over the direct routes of the Pennsylvania. Such multiple-line routes necessarily involve additional interchanges and additional transportation costs.

The statement in lines 30 and 31 of sheet 7 that the routes [fol. 332] sought would eliminate a 149-mile out-of-line haul is misleading for two reasons. In the first place, the comparison contemplated by Section 15 (4) would be with the *direct route* from origin to destination, which would be via the Pennsylvania and *would not involve the back-haul to Hagerstown*. But aside from this the Division's report fails to take into account the facts shown of record that from the standpoint of relative costs the route over the Pennsylvania, even including the back-haul to and from Hagerstown, represents a less expensive and therefore a more economical operation than either of the required routes.

The above quoted statement is further in error in its failure to distinguish between interchanges between railroads performing line-haul services and an interchange between a road-haul carrier and a carrier performing a terminal and switching service. In the case of traffic moving to and from Hagerstown over the Pennsylvania for transit at that point, the whole terminal service at Hagers-

* Route Nos. 1 and 2 prescribed in the report and order of March 18, 1943, correspond to routes A and B set forth in complainant's Exhibit 5, which are as follows:

Route A—N. Y. C. R. R. Youngstown, Ohio—P. & L. E. Connellsville, Pa.—W. M. Ry. to York, Pa., or Baltimore, Md.—P. R. R. to Destination.

Route B—Wabash R. R. to Toledo, O.—W. & L. E. to Pittsburgh Jct., Ohio—P. & W. Va. to Connellsville, Pa.—W. M. Ry. to York, Pa., or Baltimore, Md.—P. R. R. to Destination.

town, including the terminal switching service of the Western Maryland, is property to be regarded as the terminal service of the Pennsylvania. Collection of the freight charges on the inbound shipments and issuance of the bill of lading on the outbound shipments are in the hands of the [fol. 333] Pennsylvania, and the Pennsylvania bears the *per diem* expense while the car is on the Western Maryland through the means of reclaims. The cars are not inspected in connection with such a terminal switching movement as in the case of a regular road interchange. In this connection the study of relative costs contained in Exhibit 69 computes the *terminal* costs at Hagerstown at the higher average rate applicable to the Pennsylvania, although partly performed by the Western Maryland, the average terminal costs of which are shown by Exhibit 68 to be very substantially less than those of the Pennsylvania. This method of computation, therefore, overstates the Hagerstown terminal cost when the Pennsylvania's route is used, and understates its greater economy.

The statement in the report that the proposed routes would relieve the Pennsylvania from the expense of maintaining transit and absorbing the switching charges at Hagerstown, as the Western Maryland would then bear them, is fallacious, since from the standpoint of relative economy such costs would have to be taken into consideration in either case, whether borne by the Western Maryland or by the Pennsylvania. In this connection the reference to absorption of switching charges is quite beside the point in any comparison of relative costs since a switching charge is merely a revenue rate, and does not necessarily represent [fol. 334] cost at all. The governing factor would be the costs incurred by the several carriers participating in the several compared routes.

These defendants ask that the above-quoted statement be deleted and that a finding be substituted therefor in substance as follows:

"The routes sought would involve the services of *three or four more* road-haul carriers than the present routes of the Pennsylvania. Such proposed routes would also be longer than those over the direct route of the Pennsylvania. While not quite as long as the route of the Pennsylvania via Hagerstown, the routes sought are shown to be relatively more expensive to operate."

11. The report errs in reciting as contentions material and relevant facts which are indisputable upon the record.

At Sheet 5 of the mimeographed report there appears the following paragraph:

"The Pennsylvania also contends that the routes sought are not 'necessary and desirable' in the public interest because of the fact that 'the complaint was not supported by any shipper of grain or its products at points of origin, by any receiver of mixed feed at destinations or by producers or consumers of grain in the Cumberland Valley' and because of the fact that 'upon [fol. 335] the record there is no basis for assuming that any of these are dependent upon the transit operation being performed at Hagerstown.'"

The report of the Division improperly here evades the making of a definite finding one way or the other in respect of important facts by making reference to them as a mere contention. The record either justifies their being found as facts or it does not. Moreover, the report improperly ascribes such contentions to the Pennsylvania alone, in disregard of the fact that *all* defendants except the Western Maryland have made common cause against the complaint. But more than this, the statement in the report is erroneous for the reason that it is so phrased as to indicate that these considerations were the only ones on which defendants rely to show that the routes are not necessary and desirable in the public interest.

Since the facts are indisputable upon the record, and since they are relevant and material to the issue presented, these defendants ask that the Commission revise the above described finding so as to read as follows:

"The complaint was not supported by any shipper of grain or its products at points of origin, or by any receiver of mixed feeds at points of destination, or by any producers or consumers of grain in the Cumberland [fol. 336] Valley. Upon the record there is no basis for assuming that any of these are dependent upon the transit operation being performed at Hagerstown. The only evidence offered to prove public interest is that the routes sought would be of advantage to complainant as a transit operator."

12. The report misapplies the decision in the Flory Milling Case.

Beginning at the bottom of Sheet 5 of the mimeographed report the Division quotes from the first *Stickell Case*, including its quoted reference to *Flory Milling Co. v. Central N. E. Ry. Co.*, 93 I. C. C. 129. The report of the Division fails, however, to recognize and be guided by the actual decision in that case, as distinguished from some of the general language therein, and thereby draws a conclusion which is inconsistent with that decision.

For these reasons the report is in error in not including in connection with the reference to the *Flory case* a finding substantially as follows:

“Based upon the facts in this record it now appears that the principles expressed in the foregoing quotation from the *Flory Milling case* require a dismissal of the complaint herein. Thus, the only additional routes required in the *Flory case* were the second, fifth, and [fol. 337] sixth routes there described. Of the second group of routes it was found that they were approximately of the same length as the existing routes and that the same number of carriers would participate. Of proposed routes five and six it was found that they would substitute one carrier for two in existing routes and that one carrier would thus be eliminated by the routes suggested. The failure and refusal of the defendants to establish through routes and joint rates over route 4, which would inject an additional carrier without compensatory advantage of shortened haul, route 3, which would short haul a carrier, and over proposed route 1, which would involve fourth section violations, was found not unreasonable. This case, of course, did not arise under the present statute, but it is significant that the Commission did not there require additional through routes where greater total service would have to be performed, nor even in such instances where some substantial right of the carriers would be thereby invaded. Applying these principles to the facts here shown it must be concluded, both upon the additional number of carriers which would be involved in the proposed routes and on the showing of greater relative costs of service over such proposed routes than over existing routes, that the proposed routes have not

been shown to be necessary or desirable in the public interest."

[fol. 338] 13. The report is in error in concluding that the routes sought are necessary and desirable in the public interest.

At Sheet 6 of the report the Division announces its conclusion as follows:

"We conclude that the routes sought are necessary and desirable in the public interest, but the Pennsylvania contends that even if that be true the Commission is without authority to require the establishment of the routes sought as they would short-haul the Pennsylvania without its consent."

As hereinbefore shown, the foregoing conclusion is contrary to the facts of record and to the principles actually followed by the Commission in the *Flory case*. These defendants ask that the finding be reformed to read as follows:

"We conclude that the routes sought are not necessary or desirable in the public interest, but, even if they were, the defendants contend that the Commission would be without authority to require the establishment of the routes sought as they would short-haul the Pennsylvania contrary to the provisions of Section 15(4) without its consent."

14. The report errs in its findings as to the carriers that would be short hauled by the routes required.

In the first paragraph of Sheet 7 of the mimeographed report the following statements appear:

[fol. 339] "The carriers that would participate west of Hagerstown over routes 1 and 2 would receive the same hauls they now receive on traffic via Hagerstown to destinations in trunk-line territory. The Pennsylvania is the only carrier that would participate in those routes that invokes the short-hauling restriction in section 15(4), but as no additional routes are sought on traffic originated by it the underlined proviso does not affect the issues here considered."

The statements quoted are, of course, intended to make the point that carriers other than the Pennsylvania which would be involved in routes 1 and 2 as prescribed would not be adversely affected thereby for the reason that their hauls would be the same as in connection with their present routes via Hagerstown to Trunk Line destinations. But in comparing routes 1 and 2 with the existing routes of the New York Central and the Wabash in connection with the Western Maryland to the important eastern destination territory to which the flat rates apply, the report leaves out of consideration the fact that the required routes may short-haul some of the participants therein other than the Pennsylvania. In assuming the contrary the report of the Division is without support in the record. Since the report makes this assumption without record basis, it is fair here [fol. 340] to note the fact that the Wabash originating grain at Chicago, East St. Louis, or Decatur, Ill., for example, destined to points on the Eastern Shore, such as Salisbury, N. Y., and there turn it over to the Pennsylvania.* Thus, the proposed route 2 would short-haul the Wabash on grain destined to the Eastern Shore. The point of the matter is that there already exist an ample number of adequate and efficient routes from points on other lines in central territory which make direct interchange with the Pennsylvania therein, and from which the flat rates apply to eastern destinations on the lines of the latter (208-210). Therefore the statements quoted are misleading in their implication that such lines in central territory are not concerned by the prescription of the routes required. It may very well be that such prescription will tend to divert traffic destined to points on the Pennsylvania from routes which now give them longer hauls to routes which would give them shorter hauls. In the absence of anything in the record to show that this is not the case, the report is not justified in making the assumption which it does. Moreover, *no defendant has here consented to be short-hauled.*

[fol. 341] But aside from any interest of such a character, the defendants generally have a very practical concern in

* Agent B. T. Jones' Tariff, I. C. C. 3356, which publishes the grain rates, makes reference to Wabash Routing Guide, I. C. C. 6170, which provides the routes indicated.

not wanting to disrupt the present adjustment of through routes applicable to eastbound rates on grain, which would be brought about by a general recognition of the principle for which the report seems to stand, viz., that additional through routes via transit points in trunk line territory should be prescribed to avoid back-haul charges whenever the mileage circuitry of such routes as compared with the direct routes would not be excessive.

In order to enable the transit operator at Hagerstown to escape a reasonable back-haul charge, the Division's report would require origin lines in Central territory to short-haul themselves and become parties to multiple-line routes that would place the transit point intermediate to final destination. This requirement would affect all lines in Central territory, which have direct connections with the Pennsylvania and join in direct routes to the destination territory. Although presently having such direct routes, such lines under the order would have to establish and to perfect through routes and divisional arrangements in connection with the New York Central, Pittsburgh & Lake Erie, Western Maryland, and Pennsylvania, and in connection with [fol. 342] the Wabash, Wheeling & Lake Erie, Pittsburgh & West Virginia, Western Maryland, and Pennsylvania.

The order would also require the establishment of new through routes via the New York Central or Wabash and connections from market points and from common points of origin in Illinois, Indiana, and Ohio, to destinations on the Pennsylvania in the territory involved, although the Pennsylvania now serves the same market points and common points, and presently can and does haul the traffic therefrom to the destination territory. In this respect the Commission's order accomplishes a very real form of short-hauling the Pennsylvania, since it would serve to deprive it of handling traffic as to which it is the origin carrier insofar as concerns the haul from the market point or the common point under the reshipping or local rates. The rates on grain and grain products from Central territory to the East are depressed and exceedingly low (86-89; Exs. 23-25). It therefore follows that the division of these rates between five or six railroads instead of the present two-line division would make for excessive accounting and result in extremely thin earnings for each of the multiple lines.

The above-quoted language should be eliminated and there should be substituted therefor a finding substantially as follows:

[fol. 343] "The Pennsylvania specifically invokes the short-hauling restriction in Section 15(4), but all carriers defendant other than the Western Maryland unite in opposing prescription of the routes sought. None of the defendants here consents to the prescription of any through routes which would short-haul it. We cannot here properly assume that lines in central territory which would be participants in routes 1 or 2 would not be short-hauled by being required to join therein in view of the existence of routes from points on those lines to direct connections with the Pennsylvania in central territory which might give them greater hauls."

15. The report errs in not recognizing that the propriety of the routes prescribed is to be determined by comparison with the Pennsylvania's direct routes rather than with its route via Hagerstown.

In the last paragraph on sheet 7 of the mimeographed report, the Division recites that complainant does not question the adequacy, efficiency, and economy of the Pennsylvania service over its direct routes, but only over its route via Hagerstown. But the report wholly fails to recognize that the proper comparison is not of the Pennsylvania's route through Hagerstown, but with its direct routes between points of origin and destination, which the record [fol. 344] demonstrates are adequate, efficient, and economic. Complainant's position as to these direct routes should dispose of the complaint since complainant thereby concedes that the routes sought are not needed to provide adequate transportation between points of origin and destination and are not more efficient or economic than the existing routes between those points.

These defendants respectfully submit that in connection with the language quoted the Commission should include a statement substantially as follows:

"But even if the record supported this contention, which it does not, it would here be without significance. The comparison of routes contemplated by Section

15 (4) is as between the proposed routes and the existing *direct* routes, and not, as in this case, with existing route of the Pennsylvania *via Hagerstown*. In our Report on Further Hearing in the former case brought by this complainant, *Stickell & Sons v. Western M. Ry. Co.*, 154 I. C. C. 759, at page 761, we stated:

“ ‘In this connection complainant seems to be of the opinion that the question is whether the proposed through routes would short haul the objecting defendants in comparison with other routes which exist or could be constructed *through Hagerstown*. This, [fol. 345] however, is clearly not the question, for there is no express requirement of law that routes must pass through particular intermediate points, and neither the short-hauling limitation nor any other provision can be read as implying any such requirement.’ ”

16. The report errs in failing to disallow complainant's comparisons of the speed of service over the respective routes.

Beginning at the bottom of Sheet 7 and extending over to Sheet 8 of the mimeographed report the following statements appear:

“Based on the fact that the out-of-line and interchange service at Hagerstown would be eliminated, the fact that a car leaving Hagerstown via the Western Maryland late in the morning arrives at Elsmere Junction (Wilmington) on the Reading the next morning and information received from the Western Maryland, complainant estimates that it would save two days in reaching destinations in the Delmarva Peninsula if the routes sought were established. Its experience shows that it takes one day each way between Harrisburg and Hagerstown and one day for each interchange between the Western Maryland and Pennsylvania at Hagerstown, making a total of four days required for the out-of-line service, and that it takes an average of [fol. 346] three to four days for the movement of a car from its plant to destinations on the Delmarva Peninsula.”

The report is in error in referring to "interchange service" at Hagerstown in connection with shipments in and out via the Pennsylvania as if such service were the equivalent of interchange service between road haul carriers. For the reasons stated in connection with an earlier assignment of error* interchange service between road haul carriers is of substantially different character and greater measure than an interchange of cars as between a carrier performing a road-haul service and another carrier performing terminal switching for it. There is therefore no reason to conclude that the total terminal service performed at Hagerstown on a Pennsylvania shipment for complaint is any greater or more expensive than a terminal service performed by the Pennsylvania alone.

The report is further in error in this respect because of its failure to disallow complainant's estimate of the time which would be saved by use of the routes sought instead of the route of the Pennsylvania to and from Hagerstown. The record shows that inbound cars over the Pennsylvania consigned to complainant are generally [fol. 347] "order notify" shipments and are set off in the Pennsylvania's No. 1 Yard at Hagerstown so that they can more promptly be handled when the bill of lading is lifted and the car ordered in (235-236). It is, therefore, possible that any delay in making delivery on inbound shipments is due to complainant's delay in lifting the bill of lading. But in any event, any such delay in connection with the inbound movement would have no relation to or bearing upon complainant's ability to make prompt delivery of feeds on the Peninsula after the receipt of orders therefor. The proper comparison would be of *outbound* shipments via the proposed routes with similar shipments via the Pennsylvania. The fact is that the only competent evidence of record by way of comparison of the time in transit over existing and proposed routes from Hagerstown to eastern destinations on the Pennsylvania is that of Witness Clark. That evidence shows beyond peradventure that the better service would be by the Pennsylvania's existing routes. To some of the destination territory, such as to Chatham, Pa. (a point of destination regarded by complainant as typical) a movement over the

* *V. supra*, p. 10, Sec. 10.

proposed routes would, because of the arrangement of train service, be extremely slow and impracticable. (236, 237, 241-244).

The last sentence in the portion above quoted should be [fol. 348] deleted from the report and in its stead should be substituted a finding in substance as follows:

“The record does not justify a finding to this effect, but on the contrary discloses that the routes sought would not be as expeditious as the existing routes of the Pennsylvania.”

17. The report is in error in failing to find that the proposed routes would not be as adequate, expeditious, efficient, or economical as the existing routes.

The first complete paragraph at Sheet 8 of the report which compares the service over the route of the Pennsylvania and over the routes prescribed to the Delmarva Peninsula is in error in that it fails to reflect the facts of the record, and because it goes beyond the record for unjustified assumptions to defeat the facts as shown. The paragraph now reads:

“The Pennsylvania does not categorically deny the latter statement but says ‘ordinarily speaking’ it holds itself out to ‘make’ established schedules from Hagerstown of 24.75 and 31.5 hours to Salisbury and 29 hours 55 minutes and 39.25 hours to Cape Charles, Va. It does not allege or show that it maintains through train service from Hagerstown to points on the Delmarva Peninsula. In fact the evidence indicates that it does [fol. 349] not. The Pennsylvania says that there have been delays in classification and at times excessive traffic and emergency conditions which have prevented it from maintaining those schedules. A witness for the Pennsylvania expressed the opinion that physical operations, presumably after the interchange at Hagerstown, are better via Enola Yard than via York or Fulton Junction and estimates that a movement from Hagerstown via York would require 36.5 hours to Salisbury and 49.25 hours to Cape Charles and via Fulton Junction, 33 hours to Salisbury and 45.75 hours to Cape Charles. No explanation is given why a longer time is estimated for the haul from Salisbury to Cape

Charles for traffic moving over the sought routes than is allowed in the present schedules for traffic moving via Enola Yard."

The first quoted sentence is contrary to the record. The "latter statement" mentioned presumably refers either to the whole of lines 4 to 10 at sheet 8, or to the last clause of that sentence in lines 8-10. For the reasons explained in connection with the next preceding assignment of error, those statements are unsound and unjustified. If the reference is to the statement in lines 8 to 10 "that it takes an average of three to four days for the movement of a car from its plant to destinations on the Delmarva Peninsula," [fol. 350] then the testimony of witness Clark is properly to be considered as a categorical denial thereof. This is the meaning of his statement that "ordinarily speaking" the Pennsylvania holds itself out to "make" the established schedules indicated. This is the operating man's way of saying that that is the movement given under ordinary or normal conditions. Thus a passenger timetable contains "established schedules" and the public makes use of them in accordance therewith. The same term does not take on a different meaning when applied to freight trains.

The proposed report is flatly in error in saying that the Pennsylvania "does not allege or show that it maintains through train service from Hagerstown to points on the Delmarva Peninsula. In fact the evidence indicates that it does not." "An established schedule" from an origin to a destination, such as from Hagerstown to such a point as Salisbury, is a "through train service" in the same sense as is an established schedule from Chicago to Salisbury. In the latter instance the train from Chicago must be broken up and classified at Enola Yard and again at Edge Moor Yard, but connections are provided at those points to handle the Salisbury traffic. Likewise, in the case of Hagerstown business for the same destination, the cars are yarded and classified at Enola and again at Edge Moor, but connections are provided at those points in the [fol. 351] same manner as for the Chicago-Salisbury business. This is the meaning of the evidence when interpreted in the light of the general understanding of such things by competent parties.

In this connection the report is unfair in regarding the witness' reference to occasional delays because of emer-

gency conditions as representing the ordinary or normal condition. The fact is that it is not. This is a situation which occurs in the case of all traffic when congestion, weather conditions, wrecks, and similar interferences occur.

The fifth sentence of the above-quoted paragraph is objectionable on several counts. Thus on a factual matter of substance the report fails to contain a definite finding of fact. More than this it is erroneous to "damn with faint praise" the testimony of the witness by referring only to his expression of *opinion* on the subject, without reference to the detailed facts presented by him which indicate some of the background for that opinion. In addition, the inclusion of the expression "presumably after the interchange at Hagerstown" is erroneous. This is the Division's presumption and not that of the witness.

The concluding sentence in the above-quoted paragraph is another instance in which the Division, by adopting the [fol. 352] finding of the Examiner, has gone outside the record for reasons to excuse the making of definite findings of fact based upon the record. Thus, although the record is perfectly clear and undisputed, based upon the testimony of a competent operating officer, that a movement from Hagerstown via York or Fulton Junction to Salisbury or Cape Charles would require a longer time than over the route of the Pennsylvania through Enola, the Division has *assumed* the unreliability of this evidence because the witness did not explain a greater disparity in time as between the two routes when the destination was Cape Charles rather than Salisbury. As will subsequently be noted in dealing with the points of law involved, there was and is no burden upon the defendants to establish such facts with respect to the efficiency or economy of operation of proposed routes as would be necessary to enable the Commission to prescribe routes which would short haul carriers without their consent.

The same concluding sentence of the paragraph above quoted was included in the Examiner's report, and because he had gone outside the record to defeat what was in the record, these defendants, although under no burden of proof in the matter, but merely as an evidence of good faith, reproduced in their exceptions (pp. 55, 56) a statement re-

ceived from Witness Clark which explained the reason for [fol. 353] the greater disparity. This statement follows:

"As to the statement that 'no explanation is given why a longer time is estimated for the haul from Salisbury to Cape Charles for traffic moving over the sought routes than is allowed in the present schedules for traffic moving via Enola Yard': First of all no explanation is required since the facts have been stated and should be accepted by the Examiner in the absence of proof to the contrary. However, the difference is brought about by the fact that the P. R. R. operates a freight train (D-27) from Edge Moor to Delmar (Salisbury freight being moved from Delmar to Salisbury by yard power) and another train (D-3) from Edge Moor through to Cape Charles. If the traffic were received at Fulton Jet. or at York it would receive D-27 movement to Delmar (for Salisbury) and if for Cape Charles it would have to be handled from Edge Moor to destination in D-3. On the other hand if routed via Enola Yard in the case of the 24.75 hours to Salisbury and 29.92 hours to Cape Charles both Salisbury and Cape Charles would be handled in D-3. In the instance of the 31.5 hours to Salisbury and 39.25 hours to Cape Charles the move would be D-27 to Delmar (for Salisbury) and D-3 to Cape Charles, the same as for the Fulton Jet. and York shipments, but the movement into Edge Moor Yard from Enola would be [fol. 354] by train TH-2 operating via Perryville, whereas the Fulton Jet. would be by MD-116, and the York shipment by YP-2 to Columbia and ATH-2 to Edge Moor. Consequently the elapsed times to Salisbury via the various routes would differ, hence the subtraction of such elapsed times from the times to Cape Charles would give a varying amount according to the route and trains used. In other words the attempted calculation by the Examiner fails to take into consideration that the times stated are the elapsed or over-all times over the different routes up to Edge Moor."

Complainant in its Reply (pp. 14, 15) in respect of this matter stated:

"This exception is supported by 'testimony' received after the record was closed and the report of the Ex-

aminer served (p. 55 of exceptions). Such procedure is unfair to complainant and also to the Examiner. It is hardly necessary to remind the Commission that it likewise hardly conforms to its Rules of Practice."

But granting that the Commission was not entitled to receive or to rely upon such explanation in view of complainant's lack of opportunity for cross examination, and in view of its objection, nevertheless, the Division was not justified in failing to make the findings required by the facts [fol. 355] of record and, contrariwise, in disallowing their force on the basis of an unjustified assumption.

For these reasons these defendants ask that the above quoted paragraph be amended to read as follows:

"Enola on the Pennsylvania, opposite Harrisburg, Pa., is an important yard on the Pennsylvania which receives and dispatches traffic in all directions and to and from which numerous regularly scheduled trains operate in addition to extra sections and extra trains. There are three scheduled trains in each direction between Enola Yard and Hagerstown and also many extras and additional sections of these trains (226-227). The arranged freight train movements in and out of Enola provide two schedules from Hagerstown to the Peninsula. The first of these has an elapsed scheduled time to Salisbury of 31 hours and 30 minutes, and to Cape Charles of 39 hours and 15 minutes. The second schedule provides an elapsed time of 24 hours and 45 minutes to Salisbury and 29 hours and 55 minutes to Cape Charles. While the Pennsylvania interchanges freight with the Western Maryland at various junctions, including Fulton Junction and York, there are no arranged freight train schedules, with the Western Maryland. Cars out of Hagerstown operating over proposed routes with the Western Maryland through Fulton Junction would require 33 hours to Salisbury [fol. 356] and 45 hours and 45 minutes to Cape Charles; and via York would require 36 hours and 30 minutes to Salisbury and 49 hours and 15 minutes to Cape Charles (238, 242). To Milford, N. J., a destination in which complainant is interested, the movement over the proposed route through Fulton Junction would be approximately a day slower than via Enola due to

lay-over at Edge Moor Yard or Philadelphia Yard to make the connection to Milford, due to the fact that the Pennsylvania's schedules are not set up to handle Milford traffic out of Fulton Junction (Exhibits 3, 4; 244). Chatham, Pa., mentioned in complainant's Exhibits 3 and 4, which is located on one of the Pennsylvania's branches between Pomeroy and Avondale, Pa., has only tri-weekly service and could only be reached from Fulton Junction via Philadelphia or via Harrisburg and Lancaster (241, 242). An operating officer of the Pennsylvania, after testifying to these and other matters affecting operating conditions, expressed the definite opinion that from the standpoint of physical operation the routes via the Pennsylvania from Hagerstown are more adequate, expeditious, and efficient than either of the proposed routes. The record requires the conclusion that the proposed routes are not needed to provide adequate transportation and that they are not as efficient or economic as the existing direct routes between points of origin or destination or even as the existing route via Hagerstown."

[fol. 357] 18. The report fails to make proper findings concerning the operating disadvantages of the prescribed routes via Fulton Junction and York.

The report of the Division at sheet 8 contains the following paragraph:

"The Pennsylvania interchanges traffic with the Western Maryland at York and Fulton Junction only once every 24 hours. Consequently the interchange tracks at those junctions are now used to near and sometimes to full capacity. The limited facilities and operating difficulties encountered at or near those plants are described in considerable detail. The evidence does not show, however, that those conditions are any more difficult than operating difficulties encountered at Hagerstown."

The foregoing paragraph fails to reflect the record and fails to contain findings responsive to the record. The complaint herein asks the establishment of new through routes via certain junctions between the Western Mary-

land and the Pennsylvania. The operating conditions which would attend the movement of traffic via such routes, and particularly with respect to the effect of such conditions upon the efficiency and economy of such movements are of substantial significance and relevancy to the question as to [fol. 358] whether such additional through routes should be established at all, and if so via what junctions. Yet the proposed report omits any adequate reference to the evidence on this subject by the statement that "The limited facilities and operating difficulties encountered at or near" York and Fulton Junction "are described in considerable detail." In this connection the proposed report by the use of the word "Consequently" in the second sentence erroneously implies that the use of present interchange tracks at those junctions to capacity or nearly so is *because* the interchange is made "only once every 24 hours."

The last sentence of the paragraph, to the effect that the evidence does not show that operating conditions are more difficult at York or Fulton Junction than at Hagerstown is flatly contrary to the record. The discussion at this point relates *not* to a comparison of *present* and proposed routes, but rather to a comparison of the proposed routes via York and Fulton Junction with *proposed routes 1 and 2 up to Hagerstown and thence Pennsylvania Railroad to destination*. The only evidence on the subject is that of witness Clark. At pages 236-237, in response to a question of the Examiner this witness testified as follows:

"Exam. Berry:—It would be more economical if you received the car at Hagerstown and carried it up [fol. 359] around Harrisburg than to receive it at Fulton Junction or York.

"Clark:—Absolutely. • • •"

Again at pages 241-242 Mr. Clark testified:

"Q. Well, considering the Fulton Junction, York, and Hagerstown as possible gateways by which to receive traffic over routes from the Western Maryland, which are the worst and which are the better, and how do they compare?

"A. Well, as of the three, Hagerstown would be the best, and that is exemplified by the scheduled service."

These defendants ask that the above quoted paragraph of the report be deleted and that in lieu thereof the Commission find as follows:

“From an operating standpoint Fulton Junction would be unsatisfactory as an interchange point on this traffic. There is but one interchange track at that point. It holds about 28 cars and is used by both roads, as well as serving three private sidings (227-229). Cars received from the Western Maryland at this point must be handled to the Pennsylvania's Gwyn's Run Yard, about $1\frac{1}{2}$ miles south. This involves a partial use of a main passenger track near the south entrance to the B. & P. tunnel. Because of the large number of train [fol. 360] movements through this tunnel—an average of 177 per day—there is much interference to such freight movements.

“After moving through the B & P tunnel which is $1\frac{1}{2}$ miles long, the cars received from the Western Maryland, as described pass through the intricate Baltimore Union Station track layout and thence through the Union Tunnel, which is six-tenths of a mile long, and from there to Bay View Yard. This yard is about 10 miles from Gwyn's Run Yard. At that point cars so handled would be dispatched in road trains. Considering the train density and block restrictions through the Baltimore tunnels and station area, Fulton Junction would not be an efficient or economic point of interchange for this traffic” (227-232; Ex. 67).

“The interchange between the Western Maryland and the Pennsylvania at York is not such as to make a route *through* that junction an adequate or efficient or economic one. The interchange track is about 3 miles from the Pennsylvania's yard and to get cars from it the Pennsylvania engines must pass through city streets, passing 18 crossings at grade. This movement is through a heavy industrial area, and interference from switching engines is frequent. While York was established by the Commission as an interchange point between these roads for taking care of traffic originating or terminating in that area,* it would [fol. 361] not be satisfactory as a *junction* on through traffic. The arranged service from York to eastern points operates over a single-track line of limited ca-

capacity to Columbia, Pa., 13 miles distant. Here cars for the Eastern Shore would have to be cut out and placed so as to be picked up by a train operating out of Enola Yard through Perryville, Md., to Edge Moor Yard near Wilmington. Here further classification would be necessary (232-235).

"Because of the method employed in serving certain of its branch lines, the proposed routes to some of the destination territory on the Pennsylvania, in which complainant is interested, would be wholly inadequate as against a satisfactory service now available by the route of the Pennsylvania to and from Hagerstown (241)."

19. The report errs in its discussion of the adequacy of the interchanges between the Western Maryland and the Pennsylvania at York and Fulton Junction.

The last paragraph at Sheet 8 of the report, including its quotation from the *York Switching case*,* is irrelevant to any issue in this case, and has no proper place in the report. The complaint herein presents no question concerning the *adequacy* of any *interchange* between the West-[fol. 362] tern Maryland and the Pennsylvania *as such*, nor have the parties been heard upon any such issue. The discussion indicates that the Division has wholly failed to distinguish between a physical adequacy to accomplish an interchange of cars, and the question of adequacy, efficiency, and economy of operation which is significant in the determination as to whether particular proposed through routes are necessary or desirable in the public interest and whether they are routes which the Commission may lawfully prescribe. The inapplicability of the discussion in the report to the present situation will appear from the following illustration. Thus, *a very substantial*, if not the most important, *part of the operating difficulties* which retard the transfer of freight from Western Maryland road trains to Pennsylvania road trains in the Baltimore area via Fulton Junction arise from the *interference produced by fast passenger trains and through freight trains operating between Washington and points north of Baltimore through the two Baltimore tunnels and the Baltimore Union Sta-*

**York Mfrs. Asso. v. P. R. R. Co.*, 107 I. C. C. 219 (1925).

tion area. If the reference in the second sentence of the paragraph is taken as apparently intended, then it would seem to mean that the Pennsylvania should make whatever adjustment is necessary in its through train service, ~~or~~ in its physical facilities in the Baltimore area, such as [fol. 363] by increasing its tunnel capacity, so that traffic received in interchange by the Western Maryland at Fulton Junction could be more quickly be incorporated into road trains in the Bay View Yard north of Baltimore. The point of the matter is that Section 3(3), now Section 3(4) of the Act, has nothing to do with the instant case. The question for the Commission to determine is whether *complainant* has shown that the *proposed routes* are necessary and desirable in the public interest and whether it has also shown that such proposed routes are needed in order to provide *adequate, and more efficient, or more economic, transportation.* Defendants submit that this the complainant has not done.

20. The report errs in mistreating and disallowing the evidence of relative costs of transportation over the existing and proposed routes.

The paragraph at Sheet 9 of the Division's report which deals with defendants' evidence of the relative costs of service over existing and proposed routes is in error in the several respects below noted. The paragraph reads as follows:

"The Pennsylvania also contends that it is more economical to transport traffic over its direct route and its routes via Hagerstown than it would be to transport it over routes 1 and 2. As evidence thereof [fol. 364] it introduced a cost study based on annual reports filed with the Commission in which the formula used by the Commission's Bureau of Statistics in its Statement No. 3812 of March 1938 was followed generally with some variations. That study purports to show the cost of transporting a car of grain weighing 33 tons over the direct routes of the Pennsylvania, its routes via Hagerstown, routes 1 and 2, and other routes between selected points. Among other things it purports to show that, based on the Pennsylvania's average system costs and the average system costs of the other carriers that would participate in routes 1 and

2, it costs less to transport a car of grain over the Pennsylvania's routes via Hagerstown than it would to transport it over routes 1 or 2. The Pennsylvania does not contend that the study shows the cost of handling grain to the destinations under consideration but states that it furnishes a 'reasonably reliable basis for determining the relative costs of transportation.' Even as to relative costs its value, if any, is limited to average system costs on all less-than-carload and carload freight, while here we are dealing with a heavy loading commodity moving comparatively long distances in well-defined channels."[*]

[fol. 365] (1) The report of the Division fails to contain any definite finding as to whether the routes sought by complainant have been shown to be needed to provide adequate transportation and are more efficient or more economic in respect of the relative costs of operation than the existing direct routes between points of origin and destination or than the existing route via Hagerstown. As hereinafter argued more at length,** amended Section 15(4) of the Act makes the jurisdiction of the Commission to prescribe the routes sought dependent upon its being able to find that they will be less expensive to operate than the existing routes and also that the sought routes are needed to provide adequate transportation. Because such findings are jurisdictional, the report greatly errs in failing to include definite findings on the subject.

(2) The above-quoted portion of the proposed report is in error in that it places on defendants the burden of proving that the existing routes are more economical of operation than the proposed routes. The law casts no such burden on the defendants, but rather on the complaint to prove that such routes are less expensive to operate than the existing routes. This clearly has not been done and the Commission's report should so find.

* The proposed routes through York or Fulton Junction can not properly be said to be "well-defined channels" for the movement of grain and grain products from C. F. A. and the West to eastern points on the Pennsylvania.

** V. *infra*, p. 77.

[fol. 366] (3) The above-quoted paragraph is also in error because of its failure, and the failure of the report at any point, to contain an intelligent appraisal of the cost data of record in the light of the issues to which they were directed, and because of the erroneous interpretation and conclusion announced regarding them. Some of the more glaring errors contained in this portion of the report in these respects will be noted.

(a) The last sentence of the above-quoted paragraph concludes that the cost comparisons embraced in Exhibits 68 and 69 include "average system costs on all less-than-carload and carload freight." If any analysis at all had been made of the cost data underlying the comparisons it would have been seen that the costs applicable to less carload traffic, such as platform costs, etc., were eliminated, and are not included in the cost comparisons of the respective routes.

(b) The reference in the concluding sentence of the above-quoted paragraph to the traffic involved as long-haul traffic, and the conclusion drawn therefrom—that the cost comparisons are accordingly of limited value—indicate a complete misapprehension as to the nature of the cost comparisons. Since such comparisons are based on costs which have been separated as between line and terminal elements, comparisons based upon them are not subject to [fol. 367] criticism based upon differences in the hauls of the traffic involved from that of all traffic.

(c) In its failure to give weight to the data covering the relative costs of operating the existing and proposed routes, on the ground that they are average system costs, the above-quoted portion of the report indicates that such data have not been given consideration by any of the Commission's staff informed with respect to such matters. This appears not only from its virtual general condemnation of system average costs as such, but also from its disallowance of them as here employed in this case.

Taking *first* the question of the *reliability of system average costs in general*, it has, of course, long been recognized that cost units, such as costs per car-mile or per ton-mile, which include both line and terminal elements on an average basis, may fail of reliability where applied for distances shorter or longer than the average hauls in which

such costs were incurred. This criticism is, of course, obviated if costs are computed under a proper separation of line and terminal cost elements.

The Commission has recognized that the science of railway cost accounting has not developed to a point where a railroad can apportion to the transportation of a particular commodity with exactness its fair portion of costs in- [fol. 368] curred in common with the transportation of other commodities or of passengers. *Georgia Pub. Serv. Comm. v. Atlantic Coast Line R. Co.*, 186 I. C. C. 157, 187; *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.*, 30 I. C. C. 597, 602; *Sugar from Key West*, 112 I. C. C. 347, 348. Recognizing the difficulties inherent in determining the transportation costs of handling a single commodity or kind of traffic, both the Supreme Court and the Commission have at times indicated that resort may be had to average costs of all transportation per unit of traffic. *A. C. L. R. R. v. Florida*, 203 U. S. 256; *Wood v. Vandalia R. R. Co.* 231 U. S. 1, 6, 7; *Smyth v. Ames*, 169 U. S. 466; *Georgia Pub. Serv. Comm. v. Atlantic Coast Line R. Co.*, 186 I. C. C. 157, 184. In *Baltimore & O. R. Co. v. United States*, 298 U. S. 797, the so-called *Citrus Divisions Case*, the Supreme Court, in dealing with the cost data on which the carriers there relied to prove confiscation, which data had not been computed upon a separation of line and terminal costs, said on this point at page 387:

"The burden on appellants, heavy though it is, does not require them to prove with arithmetical accuracy the cost of the transportation covered by the challenged divisions or the value of the property used to perform it, or the proportion attributable to that service. It is enough, if the evidence preponderating in their favor [fol. 369] reasonably warrants findings sufficient to support the decree sought. Many issues as to which demonstrable accuracy is impossible have to be decided by the courts. *In ascertaining cost of transportation of one out of many commodities hauled by railroads it is impossible to attain precision. Mere lack of it is not ground for objection either to the evidence offered or the facts which it tends to prove.*" (Italics inserted.)

The Commission's own Bureau of Statistics has from time to time employed various formulae for the computa-

tion of cost data, which formulae customarily are based on the system figures of the several roads as reported to the Commission. One of these formulae is contained in Bureau of Statistics Statement No. 3812 of March, 1938, and it was this formula, with certain changes as indicated in Exhibit 68, that was the basis for the computation of the relative costs shown in Exhibits 68 and 69 (244-251).

In the Commission's investigation covering the transportation of new automobiles (No. 28190), the Commission's Bureau of Statistics has employed a formula, according to which cost data were assembled, which to an important extent involves the use of system average costs, although, of course, with separation of line and terminal [fol. 370] data. In the Commission's pending class rate and classification investigations (No 28300 *et al.*) a member of the Commission's staff introduced into the record, for different territories and types of equipment, cost scales computed from freight service costs as obtained to an important extent from system average data.

For these reasons these defendants respectfully submit that the Commission would not be justified in casting aside without any proper consideration, as the Division has done, the relative cost evidence contained in Exhibits 68 and 69.

Coming next to the erroneous disallowance by the report of defendants' cost data as bearing on the issues here involved, it is important to note that the criticism thereof wholly lacks justification. While the value of somewhat similar computations of relative costs, as applied to different territorial groups of carriers in the transportation of interterritorial traffic, has at times been discounted on the ground of the different consist of traffic in the different territories, such a criticism is not properly applicable in the instant case, since all the routes compared are *within a single territory* where the consist of the traffic is similar. In this connection it is significant that the concluding sentence of the above-quoted portion of the report appears to place great stress, in its disallowance of the cost data, upon [fol. 371] the fact that they are computed from average system costs "while here we are dealing with a heavy loading commodity" This, of course, means that the report indulges the *assumption* that the loading of the traffic involved of 33 tons inbound to Hagerstown and 24.6 tons outbound from that point is heavier than the average

of all traffic. There is nothing in the record to warrant this assumption. On the contrary, if from the revenue tons carried, as shown in Exhibit 68, there be deducted the l.c.l. tons (Item 12), and the difference be divided by the number of carload units as shown in Annual Report Schedule 541, excluding l.c.l. (on which Item 15 is based), it will be found that the average load of revenue carload freight in tons is as follows for the several lines which would be involved in routes 1 and 2, for which relative costs are computed in Exhibits 68 and 69:

Average Load of Revenue Carload Freight for the Year
1940

<i>Railroad</i>	<i>Tons</i>
Pennsylvania	39.0
New York Central	35.8
Pittsburgh & Lake Erie	50.4
Western Maryland	40.0
Wabash	27.4
Wheeling & Lake Erie	43.0
Pittsburgh & West Virginia	41.0

[fol. 372] But even if the weight of complainant's traffic does differ from the average weight of carload freight on the lines of the several carriers particularly involved, the disparity in the weight of such traffic and of average carload traffic for the proposed routes, taken in their entirety, does not differ so substantially from the average weight of carload traffic on the Pennsylvania as to impair the value of defendants' cost comparisons for the purposes of this case.

For the reasons indicated, these defendants ask that the above-quoted paragraph be revised to read substantially as follows:

"While there was no burden upon them to prove a negative, the defendants introduced exhibits comparing the relative costs of transportation over proposed routes 1 and 2 and over existing routes of the Pennsylvania. The first of these comparisons is computed on the assumption of the through movement of a car of 33 tons of grain and grain products from western origins over proposed routes 1 and 2 and over the direct route of the Pennsylvania to eastern destinations with-

out any stopping in transit. The second exhibit is similar except that it is computed on the assumption of a stopping in transit at Hagerstown. Since a study of complainant's shipments via the Pennsylvania disclosed an average inbound tonnage of 33 tons and an average outbound tonnage per car of 24.6 tons, this exhibit takes into account the fact that for each car [fol. 373] inbound there would be 1.34 cars of outbound grain products. The costs are based on the annual reports of the carriers to this Commission for the year 1940, and are computed, with some modifications, according to the formula embodied in Bureau of Statistics Statement No 3812 of March, 1938, which is predicated upon a separation of line and terminal cost elements. The results of those studies may be summarized as follows:

COMPARATIVE FREIGHT SERVICE COSTS

(Based on Assumed Through Carload Movement of 33 Tons in Box-Car Equipment from Chicago, Ill., to Salisbury, Md.—Year 1940)

Route	Miles	Total Costs	
		Operating Expenses Only	Operating Expenses, Rents, Taxes, 5.75% Return, and Passenger Deficiency
P. R. R. direct.....	902	\$121 07	\$229 93
N. Y. C.—P. & L. E.—W. M. (York, Pa.) P. R. R.	958	165 81	327 85
Wab.—W. & L. E.—P. & W. Va.—W. M. (Fulton Jct. Md.) P. R. R.	938	206 23	358 49

COMPARATIVE FREIGHT SERVICE COSTS

(Based on Assumed Carload Movement of 33 Tons from Chicago, Ill., to Hagerstown, Md., and of 1.34 cars of Outbound Products at 24.6 Tons Per Car to Salisbury, Md.—Box Car Equipment—Year 1940).

Route	Miles	Total Costs	
		Operating Expenses Only	Operating Expenses, Rents, Taxes, 5.75% Return, and Passenger Deficiency
P. R. R. direct.....	1051	\$184 10	\$349 65
N. Y. C.—P. & L. E.—W. M. (York, Pa.) P. R. R.	958	191 18	377 64
Wab.—W. & L. E.—P. & W. Va.—W. M. (Fulton Jct. Md.) P. R. R.	938	232 08	409 32

[fol. 374] "The foregoing data indicate that whether comparison is made of proposed routes 1 and 2 with the direct route of the Pennsylvania, or with its route via Hagerstown, the costs of operation via the proposed routes would be greater.

"While these cost figures do not purport to be specific costs of handling a particular commodity over particular lines of road, they do furnish a reasonably reliable basis for determining the relative costs of transportation, giving weight to line, terminal, and interchange elements, and for determining the relative efficiency and economy of the present and proposed routes. Our analysis and consideration of these relative cost data, as bearing upon the particular issues involved in this case, requires the conclusion that the proposed routes would be more expensive to operate than the existing routes of the Pennsylvania, and therefore are not needed in order to provide more efficient or more economic transportation."

21. The report errs in confusing the reasonableness of the 4½-cent out-of-line charge with the relative economy of the proposed routes and the Pennsylvania's route via Hagerstown.

The last paragraph at Sheet 9 of the mimeographed report reads as follows:

[fol. 375] "Yet the Pennsylvania while contending that from the standpoint of operating conditions and operating costs its routes via Enola Yard and Hagerstown are more efficient and economical than other routes via Hagerstown, inconsistently contends and introduced considerable evidence to show that its 4.5-cent out-of-line charge, approximately 17 percent of the prescribed rate from Chicago to Salisbury, in addition to the through rates is justified by the out-of-line haul. The justification for a special charge for out-of-line hauls is that routes that require such additional services are not comparable with and are less economical than routes that do not."

Preliminarily it should be noted that neither the Chicago-Salisbury rate, nor any other of the rates involved in this proceeding are "prescribed" as stated. The record

(86-89; Exhibits 23-25) specifically shows that the grain rates involved are subnormal and less than maximum reasonable rates.

The conclusion of inconsistency which the report draws from the premises recited in the above quoted paragraph rests upon the fallacious principle set forth in its last sentence. The fact that a circuitous route may observe the same rate as applies over the direct route does not establish the unreasonableness of an extra charge for out-of-line service in connection with hauls over the direct route, even though such service, including the out-of-line service, is a [fol. 376] less expensive operation than over the circuitous line. If complainant thought the 4.5-cent back-haul charge unreasonable, it could have brought it in issue.

The above-quoted paragraph should be eliminated and in lieu thereof the Commission should find:

“The complaint avoids making any formal attack upon the reasonableness of the back-haul charge of 4.5 cents which applies on grain transited under the P. R. R. tariff at Hagerstown when the products go to eastern destinations on the Pennsylvania, although it is the avoidance of this charge which is the objective of the complaint. Similarly, the complainant’s evidence made no attack upon the reasonableness of this charge as such. While having therefore no burden to establish a negative, the defendants, to set at rest any question which might arise, included in their showing ample proof that the Hagerstown back-haul charge was well within the limits of reasonableness as compared with other such charges as are applicable at other transit points” (183-185; Exhibits 45, 47, 50, 61-64).

22. The report is in error in concluding that complainant’s shipments to Elsmere Junction indicate the inadequacy of the existing routes.

The third paragraph at Sheet 10 of the mimeographed report reads as follows:

[fol. 377] “That the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, is evidenced by the fact that in order to meet the demands of customers for prompt delivery, complainant shipped 640 cars from Hagers-

town over the Western Maryland and the Reading to Elsmere Junction thence by truck to points on the Delmarva Peninsula. The fact that the proposed routes would be more economical to the shipper is shown by the fact that the saving in transportation charges would be 4.5 cents per 100 pounds on all grain and grain products moving over those routes and transited at Hagerstown, as compared with the charges over routes of the Pennsylvania via Enola Yard heretofore described."

The first sentence in the above-quoted finding is without support in the record, and is contrary to the record. The reason for shipping the 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction and then by truck to points on the Delmarva Peninsula, rather than over the route of the Pennsylvania, was that the grain had not come inbound over the Pennsylvania, and therefore was not entitled under its transit tariff to move outbound over that line. This is clearly established by a comparison of complainant's inbound and outbound tonnage over the Pennsylvania. Thus, Exhibit 60 shows that for the years 1938, 1939, and 1940, the Pennsylvania handled for account of complainant at Hagerstown 890 cars inbound [fol. 378] and 1309 cars outbound. Based on the average weights of 66,044 pounds inbound and 49,200 pounds outbound, this movement amounted to 58,775,600 pounds inbound and 64,402,800 pounds outbound. While the excess of the outbound tonnage over the inbound tonnage may be due to the time lag between the inbound and outbound movement of particular shipments, it furnishes convincing evidence that the reason for not shipping out over the Pennsylvania all or part of the 640 cars which moved to Elsmere Junction—equivalent to 31,488,000 pounds—was due to the fact that complainant did not have available the inbound P. R. R. billing which would be necessary to entitle the outbound products to move to Peninsula destinations under the applicable P. R. R. transit tariff.

The second sentence of the quoted paragraph is not pertinent to the issues, but is based upon a misinterpretation of amended Section 15(4). The reason for this will be discussed in a following portion of this petition.

C. The Report of the Division Is Contrary to Law.

1. The report of the Division proceeds on an erroneous interpretation of amended Section 15(4).

In the first two paragraphs at Sheet 10 of the mimeographed report, the Division discusses the applicability to [fol. 379] the instant situation of Section 15(4) of the Act as amended September 18, 1940. Pertinent portions of the amended statute are quoted at pages 6 and 7 of the Division's report.

The basic error of law which underlies the entire report is the interpretation which the Division places upon clause (b) of Section 15(4) which relieves the Commission from the restriction on its power to prescribe through routes which short-haul a carrier without its consent where "the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation." Thus, the report at sheet 10, states in part:

"We interpret that exception to mean adequate and more efficient and more economic from the public or shippers' as well as the participating carriers' standpoint."

This interpretation is flatly at variance not only with the fair intendment of the words themselves, but also with the history of the legislation.

The meaning of the expressions "more efficient" and "more economic" may first be considered in respect of their ordinary meaning. Reference to Webster's New International Dictionary, Second Edition, Unabridged, as published by G. & C. Merriam Company in 1941, will disclose, among [fol. 380] others, the following definitions of "efficiency" which is the nominal form of the adjective "efficient";

"3. Effective operation as measured by a comparison of actual and possible results; effectiveness as compared with capacity to perform or with cost in energy, time, money, etc.; * * *"

"4. The effective operation of a business, or performance of a business task, with a minimum of waste effort.

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“6. *Mech.* The ratio of the energy or work that is obtained from a machine, a storage battery, etc., to the energy put in.”

Referring to the same source for a definition of “economy” which is the nominal form of the adjective “economic,” there is found the following definition:

“3. Thrifty and careful administration; management without loss or waste; as, a housekeeper accustomed to *economy*, but not to parsimony; often, frugality or retrenchment in expenditure; strict husbanding of resources; as, to practice a trying *economy*; also, an economizing act, move, or means; as use of adulterants is a poor *economy*; or, economizing disposition or faculty.

• • • • •

[fol. 381] “6. Prudent and sparing use of means to an end: * * *.”

When the basic meaning of these words is considered in connection with the word “transportation,” there can be no reasonable doubt but that the intention of Congress was to further relax the short-hauling limitation on the Commission’s powers only in such instances as the Commission could find that the additional route to be prescribed was needed to provide adequate transportation and, further, that it would be more efficient or more economic than existing routes in the sense of affording a *less expensive operation*.

The history of this legislation confirms this conclusion. Thus, although the Commission had from time to time recommended the elimination of the short-hauling restriction in its entirety, so that the only restriction on its powers would be the necessity of finding that proposed through routes were “necessary or desirable in the public interest,” the Congress did not adopt that recommendation. The reasons for its decision not to give the Commission such complete power is to be found in the arguments which were advanced before the Senate and House Committees by the railroads that opposed the bills that undertook such complete elimination.

While the amendment to Section 15 (4) was embodied in [fol. 382] the legislation growing out of S. 2009, as intro-

duced in the 76th Congress, no hearings were held with respect thereto in connection with that bill. This was for the reason that similar legislation had been the subject of S. 1085 and H. R. 3400 in the same 76th Congress.

When S. 1085 came on for hearing before a Sub-committee of the Senate Committee on Interstate Commerce, R. S. Outlaw, Esq., appeared for all the main trunk lines in the West, the East, and the South that opposed the bill, which undertook to eliminate the short-hauling restriction. At page 62 of the printed Hearings on that bill Mr. Outlaw in summarizing the objections of the railroads to the legislation stated in part as follows:

"The proponents of these bills are asking that the Commission be given power to prescribe additional through routes where direct, adequate, and satisfactory routes already exist, in spite of the fact that the new routes would not be *more efficient* or more satisfactory routes, would not be of material advantage to the shipping public, but would generally prove *more expensive* and less desirable *to operate*.

"The nature of the proposal is further clarified by noting what it does not seek to accomplish:

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[fol. 383] "Fourth. The purpose of the bill is not to promote *economies* with a view to providing the public with adequate transportation service at *lowest cost*.

"The primary objective of the bill is to enable the Commission where its sympathies may be enlisted, to require additional through routes which are longer, *more expensive to operate, or made up of a greater number of railroads than existing through routes*.—

"Clearly, therefore, the proposal is nothing less than a demand for wasteful transportation just at a time when all possible waste should be avoided." (*Italics inserted*.)

In similar but in more extended fashion, the Hearings which were held before the Subcommittee of the House Committee on Interstate and Foreign Commerce on H. R. 3400, contained conclusive evidence that a particularly vital objection of the railroads to the proposal to omit the short-hauling provision was predicated on the principle that the

Commission ought not to be empowered to prescribe additional through routes unless the same could be shown to be *more efficient or more economical* of operation. Reference to the following excerpts from the printed Hearings will confirm this conclusion, and will also furnish convincing proof of the sense in which the Congress employed the terms "more efficient" and "more economic":

[fol. 384] *Witness Wilcox* (pages 91-92):

"Both of the proposed bills contemplate the elimination from paragraph (4) of the limitations on the powers of the Commission which are therein contained.

"They would remove all restrictions on the power of the Commission to fix any joint through routes which it may consider as being in the public interest *without any definition by the Congress as to what is the public interest* in the premises, and *without laying down any rules for the guidance of the Commission* in determining what joint through routes will be in the public interest. In other words, the passage of either of these bills will result in a complete delegation to the Commission of legislative authority with respect to establishing such joint through routes as may seem to it desirable, without giving an originating carrier or an intermediate carrier any right under any circumstances to retain their long hauls. The Commission would be able to deprive an originating carrier, or an intermediate carrier after coming into possession of the traffic, of their long hauls although their routes may be shorter and the traffic can be handled *more efficiently and economically* than by competitive routes, based on a finding that this is in the public interest although the 'public interest' is not defined and such originating or intermediate carriers may be deprived of revenue which [fol. 385] would be arbitrarily given to their competitors.

"Short-line intermediate and delivering railroads would be permitted to participate in revenue which would accrue to originating and intermediate lines in possession of traffic if short lines are included in joint through routes with such originating and intermediate carriers via short-haul junctions, regardless of the fact that the long haul originating or intermediate carriers

may be shorter and *more efficient and/or economical.*" (Italics inserted.)

Witness Hastings (page 106):

"Thus paragraph (4) of section 15 as now worded affords protection to both the shippers and the carriers and is in the interest of *efficiency of operation.* It is obvious and axiomatic that it is *more economical and efficient* to handle traffic between two points over *one line* in lieu of *two or more different lines*, involving the delays and expense incident to interchange of traffic, where the single line is reasonably direct." (Italics inserted.)

Witness Soergel (pages 118-120):

"The carriers for whom I speak are very much concerned in the results that will ensue if this bill is passed and are very definitely and emphatically opposed to its [fol. 386] passage. Its passage will *increase operating expenses, prevent economical operation,* and entail considerable loss in revenue.

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"The establishment of a *joint route* for traffic that a one-line route can handle without undue circuitry is an *economic waste* because joint traffic is *more expensive* to handle than is local traffic and the greater the number of carriers in a joint route, the greater the expense. I think one of the troubles today is that there are too many joint hauls and rather than add to them the trend should be toward curtailment. A single-haul of 500 miles, 1,000 miles, or 1,500 miles requires two terminal services. Add just one other line and four terminal services are necessary. On 3-line hauls we have 6 terminal services, 4-line hauls, 8 terminal services, and 5-line hauls 10 terminal services. *Multiple-line routes are much more expensive* not only because of the extra terminal service, but because of delays to equipment at interchange points, extra accounting for apportionment of revenue, car records and rental.

.

"Considerable thought is now being given to the consolidation of railroads into a fewer number of systems

with the object in view of *more economical operation*, but what is proposed here is diametrically opposed to that idea, for instead of a concentration of traffic, it is [fol. 387] a dispersion of traffic, scattering it via widely different routes and in reality making *less efficient* the entire plant of the trunk-line carriers." (Italics inserted.)

Witness Lincoln (page 133):

"It [this bill] would entail *additional transportation expense by reason of interchanges where more carriers are involved than at present* in forming through routes." (Italics inserted.)

Witness Wilson (pages 142, 149, 150, 152):

"The only test would be under section 15, paragraph (3), that the Commission should deem a route necessary or desirable in the public interest and *no consideration would need to be given as to whether the proposed route could be operated as economically as an existing route or routes* or whether the net loss of one carrier which would be short hauled might not be far greater than the net gain of the carrier that was injected into the through route.

• • • • •

"The examples which I have cited will indicate to you clearly that the *cost of operation* over a joint route using a short line as an intermediate line is *greater than via the direct route*, because the distance in most cases is longer, the separate cost of operation on the short line [fol. 388] exceeds the cost of operation on a section of the through line of the same distance, and an additional railroad is injected into the route. Additional interchanges at junction points between carriers become necessary in such through routes, and each *interchange is expensive*, involving station and general office accounting, also switching of cars, and in the case of less-than-carload freight the freight has to be actually unloaded and reloaded at the interchange point.

• • • • •

“ . . . and now they want the law changed so that they may demand from the trunk lines that they be made parties as intermediate carriers to through routes and be allowed a part of the earnings *even though the cost of operation of such joint through routes is greater than the operation via the direct routes over trunk lines*, thereby reducing the net return to the carriers as a whole, which must be made up by the shipping public somewhere else.

.

“Finally I have endeavored to show the committee—

“First, that the Interstate Commerce Commission should not be clothed with *unlimited authority* to establish joint through routes or to short-haul carriers and that it is not necessary that it be given this authority and that it is *not in the interest of economical railroad operation* or of the public at large.

[fol. 389] “Second, that the short lines have no just claim to be injected into through routes *when the operation of such through route is not in the interest of all the carriers involved from the standpoint of net revenue*.

“Third, that to establish joint through routes for the purpose of *affording transit privileges at points on an intermediate railroad is not in the public interest where the net revenue to the carriers is thereby reduced*.” (Italics inserted.)

Witness Eshelman (pages 176-177):

“Primarily the nature of that limitation is to prevent the establishment of routes which are *uneconomical in operation*.

.

“We think that the Congress rightfully may lay upon the Commission a limitation where that power if exercised might tend to the establishment of that which is *uneconomical operation*.

.

“ * * * but what would here be asked would be that Congress permit the Commission to allow an *un-economic operation, a less economical operation*, * * * ” (Italics inserted.)

The foregoing excerpts from the Hearings before the Senate and House Subcommittees exemplify the objections of the railroads to empowering the Commission to require short-hauling where adequate transportation now exists and [fol. 390] where a more expensive operation would result from the additional route, and explain the purpose of the Congress in relaxing the short-hauling restriction on its powers only where it should be shown that a more efficient and more economic operation would result.

For the foregoing reasons these defendants ask that the first two paragraphs on sheet 10 of the report be stricken and that in lieu thereof a conclusion substantially as follows be substituted:

“In view of the 1940 amendment of Section 15 (4), our power does not extend to the prescription of the proposed routes, which would short-haul the Pennsylvania without its consent, in the absence of a record basis which would permit us to find that the proposed routes are needed in order to provide adequate and more efficient or more economic transportation. This obviously means more efficient or more economic from the standpoint of costs of operation. Complainant has not made any such showing, but on the contrary the defendants have introduced substantial evidence showing that the contrary is the fact.”

2. The ultimate finding of the Division's report is contrary to law.

As its final conclusion the Division, at page 10 of the mimeographed report, makes the following ultimate finding:

[fol. 391] “We find that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation and should be established, subject to the lowest through rates contemporaneously maintained on the same com-

modities from the same origins to the same destinations over the direct routes of the Pennsylvania, or over routes in which the Pennsylvania is a participating carrier via Enola Yard near Harrisburg."

For the reasons stated in the foregoing assignments of error the above-quoted conclusions are not supported by the record, but are contrary to the report, and are predicated upon an erroneous interpretation of the applicable statute, and are therefore contrary to law. The quoted finding should be stricken and in its stead the Commission should find substantially as follows:

"The through routes sought have not been shown to be necessary or desirable in the public interest, and there are no facts upon which we could find that they are needed in order to provide adequate and more efficient or more economic transportation. The complaint will be dismissed."

[fol. 392] II. The Order of March 18, 1943, Should be Postponed

The report and order entered herein by the Commission, Division 2, on March 18, 1943, was served by the Commission upon the parties on March 27, 1943. A corrected order dated March 18, 1943, was served on the parties on April 22, 1943. The order requires the defendants therein named to establish the prescribed routes on or before June 28, 1943, by notice to the Commission and the general public by not less than 30 days' filing and posting in the manner prescribed in Section 6 of the Interstate Commerce Act.

By Section 17 (8) of the Act it is provided that

"Where application for rehearing, reargument, or reconsideration of a decision, order, or requirement of a division, an individual Commissioner, or board is made in accordance with the provisions of this section and the rules and regulations of the Commission, and the decision, order, or requirement has not yet become effective, the decision, order, or requirement shall be stayed or postponed, pending decision of the matter by the Commission or appellate division; but otherwise the making of such an application shall not excuse any person from complying with or obeying the decision,

order, or requirement, or operate to stay or postpone [fol. 393] the enforcement thereof, without the special order of the Commission.

By Rule 101(e) of the Commission's General Rules of Practice petitions for reargument or reconsideration of a decision or order of the character of that here involved must be filed within 60 days after the date of service thereof.

III. Conclusion

For the reasons hereinabove set forth these defendants respectfully petition the Commission

- (a) For reargument before the entire Commission,
- (b) For reconsideration by the Commission, and for the dismissal of the complaint; and
- (c) For a stay or postponement of said order of March 18, 1943, pending disposition of the matter by the Commission pursuant to the provisions of Section 17(8) of the Act.

Respectfully submitted, (Signed) Francis R. Cross,
Joseph F. Eshelman, Counsel for Defendants
except Western Maryland Railway Company.

May 24, 1943.

1740 Broad St., Station Bldg., Philadelphia, Pa.

[fols. 394-398] Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing by first class mail a copy thereof properly addressed to each other party.

Dated at Philadelphia, Pa., this 22nd day of May, 1943.

(Signed) Joseph F. Eshelman, of Counsel.

[fol. 399] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 28647

[Title omitted]

REPLY OF COMPLAINANT TO PETITION OF CERTAIN DEFENDANTS
FOR REARGUMENT AND RECONSIDERATION—Filed June 23, 1943

Opening Statement

The complainant is engaged in milling and mixing of grain, grain products and grain by-products, and in the manufacture of mixed live stock and poultry feeds, at Hagerstown, Maryland. Complainant draws its raw materials generally from territories of production in the west. After the manufacturing process at Hagerstown, it ships its products to points of consumption east of Hagerstown. The destination points here involved are stations on the Pennsylvania railroad east of York, Pennsylvania, and Fulton Junction (Baltimore), Maryland, and between New York, New York and Cape Charles, Virginia, principally in the region known as the Eastern Shore.

[fol. 400] Under Section 15 (4) of the Interstate Commerce Act as amended, complainant seeks the establishment of through routes at the joint rates now prescribed, and reasonable rules, regulations and practices now applicable to the transportation of grain, grain products and grain by-products from the west to the east.

The two routes prescribed are (1) the well-known and long established "Pittsburg Dispatch Route" from origins on the New York Central and its connections in Central territory, through Hagerstown to the destinations on the Pennsylvania above described; (2) the well-known Wabash Route from origins on that railroad and its connections through Hagerstown to the same points as in route (1).

The joint through rates *now apply* over those routes up to Hagerstown with transit at that point, thence Western Maryland to destinations on the Western Maryland, and from Hagerstown over the Western Maryland to Shippensburg and its connections beyond covering extensive eastern territory described on Sheet 3 of the decision.

The decision of Division 2 of the Commission fully and fairly states the very simple issue above set forth, ade-

quately and correctly summarizes the evidence duly heard, and finds as follows:

"We find that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation and should be established, subject to the lowest through rates contemporaneously maintained on the same commodities from the same origins to the same destinations over the direct routes of the Pennsylvania, or over routes in which the Pennsylvania is a participating carrier via Enola Yard near Harrisburg.

"An appropriate order will be entered."

*Certain of the defendants have petitioned for reargument and reconsideration, alleging that, (1) The case is one of substantial importance, (2) That the decision of the Division is not supported by the record, and (3) That the decision is contrary to the law.

Under these three headings the petition shows twenty-seven numbered items. Some of these are repetitions, and some seem quite irrelevant to the simple issue presented. We shall undertake to reply to all of them, but shall confine our attention chiefly to those that bear upon the administration of the amended Section 15 (4) to the facts pertaining to the movement of this complainant's traffic, the only traffic here involved.

Complainant requests that the petition for reconsideration be denied for the reasons set forth hereinafter.

[fol. 402]

REPLY

The "Existing Rate Structure" Cannot be Disturbed by a Decision That Changes No Rates

The petition starts out with an argument that the Commission should deny relief to this complainant under Section 15 (4) because to do so "might establish a precedent disruptive of the existing structure of rates." (P. 2 of petition.) This type of defense is as old as the Act to Regulate Commerce, and the unfailing answer of the Commission thereto is that it will deal with each complaint as it arises, and upon the facts as presented.

Similar fears were expressed by the defendants in a like case but they never eventuated. As representative, in *Flory Milling Case*, (93 I. C. C. 129) the defendants contended that "to grant the rates and routes suggested" would disturb existing conditions. But the Commission there administered the statute stating that, "an individual shipper is entitled to the reasonable use of existing transportation facilities at reasonable rates on his traffic."

The Decision Correctly Administers Section 15 (4) of the Act

The petition next asserts that the Division's decision "emasculates" Section 15 (4), (P. 5, and 77-90, inclusive, of the petition.)

At Sheet 6 (mimeographed) of the decision, the Division quotes the amended section 15 (4); defines the Commission's duty in enforcing it, and applies the law to the facts of this complaint. The decision states with respect to its power to prescribe routes that "provide adequate, and more efficient or more economic transportation" (Sec. 15 (4)) as follows:

"We interpret that exception to mean adequate and more efficient and more economic from the public or shippers' as well as the participating carriers' standpoint."

The argument of the petition (P. 77, *et seq.*) is that Congress was thinking only of the railroads, and that the Division erred in applying the law to the public. In other words, they ask for an interpretation of the new act in the same way as the old act, thus rendering the amendment of no force and effect. In support of their argument they resort to hearings before Committees of Congress. They quote at length from what railroad witnesses told the Committees when considering the amendment.

The fact is that the law is intended to protect both the public and the railroads, and in doing the former, Congress intended to prevent a railroad from arbitrarily forcing the public over its longer and more inefficient route, and requiring the public to pay extra money for this longer and unnecessary service. The foregoing is the sound basis upon which the division administers Section 15 (4) in this case.

The first principle of statutory construction is that it is improper to resort to outside considerations such as hearings before Committees "where the language of a [fol. 404] statute is plain and unambiguous" (59 Corpus Juris 953), as is the language of Section 15 (4). The soundness of the foregoing principle is demonstrated by this petition which offers only the statements of railroad witnesses.

The impropriety of using legislative proceedings to construe a legislative act is stated by the Supreme Court in *United States v. Trans-Missouri Freight Association*, 166 U. S. 290, 318. As the court there states,

"Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other; the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it was passed."

Bearing in mind the above principle, the language used by Congress in amending Section 15(4) speaks plainly for itself and supports the application of said amendment to the facts in this case.

The amendment to Section 15 (4) resulted from the request of the Commission itself, duly made under Section 21 of the Act, which requires the Commission's recommendation as to "such additional legislation as the Commission may deem necessary." This amendment was necessary to remove the "inconvenience and hardship" to the public referred to by the Supreme Court in *U. S. v. Missouri Pac. R. Co.*, 278 U. S. 269, where this very Hagerstown route is cited by that Court. (P. 282.)

[fol. 405] The Decision of the Division is supported by the Facts of Record

Beginning on page 7 of the petition and running to page 77 thereof there are twenty-two alleged errors of fact enumerated. In our reply we shall not allow ourselves to be by-passed into patently extraneous and non-essential subjects. We say this in all fairness to opposing counsel who doubtless are desirous of raising in good faith the points that seem to them important. In the interest of complainant, however, we must deal chiefly with subjects that bear directly upon the application of a plainly worded

statute to the simple issue presented in the complaint, namely, complainant's right under Section 15 (4) to be placed upon two regularly established and long existing through routes, at the existing rates.

An examination of their twenty two alleged errors shows that what petitioners call errors are not errors of fact, but are points upon which counsel disagree with the Division and feel that in the exercise of its discretion upon the facts of record, the Division should have found some way to set Section 15 (4) aside in this case. That in doing so, the Division should have accepted the evidence of the Pennsylvania and ignored the evidence of complainant.

(The numbered paragraphs herein conform to the numbers in the petition.)

The Petition (their No. 1, page 7) asserts that a number of carriers (except the Western Maryland) are opposed [fol. 406] posing the granting of the routes sought. Theoretically this may be true, but it seems immaterial. The only destination points involved are on the Pennsylvania, and the whole record indicates that the chief opposition comes from that railroad.

The Petition (their No. 2) asserts that the Carloading figures given in the decision are erroneous. The decision fairly recites what both complainant and the Pennsylvania stated as to *average loading*. The complainant referred to its entire tonnage. The Pennsylvania evidence covers only a limited period. The difference is thus explained, and in any event is immaterial.

The Pennsylvania wants the report to mention that it absorbs switching charges at Hagerstown. (Their No. 3.) As such charges are customarily absorbed by many railroads at thousands of points, and as no issue as to such charges is here involved directly or indirectly, the report need not go into such vestigial subjects.

The petition (their No. 4) states that if the *back-haul* charge were eliminated, the basis of the complaint would be removed. Petitioners misapprehend our position. The complaint seeks through, direct economical routes at the going through rates to avoid the delay and inefficiency of the back-haul route, as well as the payment for a back-haul service not wanted by complainant, and not needed by com-

plainant. (Rec. pp. 34, 39, 48, 49.) The report correctly states "Complainant does not assail the reasonableness of the through rates, the out-of-line charge (back-haul), or the transit charge."

[fol. 407] The petition (their No. 5) argues that because the complainant has open to it other routes to other regions on other railroads without back-hauls, that complainant should be satisfied with a back-haul route to the particular destinations on the Pennsylvania named in the complaint. The petition requests a finding that complainant is not entitled to reach the Eastern Shore region without paying back-haul charges to the Pennsylvania, because complainant now has open to it other destinations on other railroads without such charges. In other words, the Pennsylvania says the Commission should absolve it from this complaint because of the virtues of other railroads.

The petition (their No. 6) objects to the statement in the decision that all shippers should be "accorded equal opportunity to reach all available markets." They say that this does not apply in a case of "unfavorable location." The Pennsylvania Route requires an unnecessary out of line back-haul entailing 149 miles that complainant does not need and does not want. All of this "unfavorable location," is confined solely to the Pennsylvania back-haul route. In referring to this wasteful back-haul service, the Commission states in the former report herein:

"The justification for the special charge is the uneconomical character of the shuttle service from and to the through route." (146 I. C. C. 615.)

In referring to back-haul, out-of-line routes, the Commission says:

"They can hardly be called through routes, for the traffic moves in and out of Hagerstown over the same [fol. 408] line, and the joint rate applies only with the addition of a back-haul charge for the out-of-line movement." (146 I. C. C. 614, at 615.)

The Comparisons of Hagerstown with Other Locations Are Mere Paper Comparisons

Confronted with the direct result of its arbitrary refusal to join in the direct and efficient routes herein pre-

scribed, petitioners divert attention to regions remote from the locality to which this case is confined (their No. 7, pages 7 to 22). This is no defense to this case. These comparisons are sterile of any showing of similarity of conditions, or even of any movement, and under many decisions of the Commission such comparisons are regarded as mere paper comparisons and therefore valueless as evidence. (14 I. C. C. 376, and many others.) Any movement on these comparisons would be most unlikely, and the comparisons rest upon a misapprehension of the grain and feed movement upon through joint rates shown of record. (Rec. p. 7, *et seq.*)

The competition on grain and feed is so keen that the presence of a back-haul charge frequently precludes a movement. The 4½ cent back-haul charge will often be sufficient to wipe out all profit on feeds. As to the payment of combination of local rates repeatedly referred to in the comparisons offered, such a thing is absurd in this milling business. (Rec. p. 10.) Again, many of the origins mentioned in the petition such as Lancaster and York, Pennsylvania and Circleville, Ohio, and others, reach these destinations on the Eastern Shore on the through joint rates [fol. 409] and nothing more. (Rec. pp. 49, 54-55, 57, 58.) Others of these origins may and probably do have routes over other lines that reach the markets at the through joint rates and nothing more.

The Administration of the Law in this Simple Case will not Upset any Rate Structure

The argument in their No. 8 beginning on page 22, is filled with apprehensions and speculations as to breaking down the entire rate structure of this country, from the granting of the simple local relief requested by complainant. We have covered this point hereinbefore.

The argument here is that the administration of the Act resulting in wiping out the unnecessary back-haul service via the Pennsylvania route to stations on the Eastern Shore will result in a complete break-down of the grain adjustment of the eastern half of the nation. The obvious overstatement in this claim speaks for itself. The result of the finding recommended will not cause a ripple. They say it will result in "cross hauling." There can be no more useless cross-hauling than a lengthy back-haul of

149 miles which is so burdensome to the Pennsylvania that it is compelled to enforce a prohibitive back-haul charge therefor.

The petition asserts (their No. 9) that the decision herein is based upon a former decision. The decision of Division 2 follows the usual course. It recites the essential facts offered upon the present record by both sides, and upon those facts rests its decision. The mere reference [fol. 410] to the former decision dealing with the same issue, the same complainant, and the same defendants, can hardly be questioned as appropriate.

The Pennsylvania Route is Longer and More Costly Than the Direct Routes Prescribed

The petition (their No. 10, page 29) objects to the finding in the decision that the prescribed routes are more direct and economical than the longer and back-haul route of the Pennsylvania. It attempts to support this claim by asserting that in figuring the Pennsylvania route the *length of the back-haul should be ignored*.

Their argument is that when a shipper is seeking a through route under Section 15 (4), the route he is seeking must be compared with a route upon which he is not located and which passes him by seventy-five miles away. They give no statutory authority for their contention. On the other hand, Section 15 (4) provides that the Commission shall "give reasonable preference to the carrier by railroad which originates the traffic." On the two routes prescribed by the Division, the Pennsylvania originates no traffic. Moreover, said two routes are shorter than the Pennsylvania route via Hagerstown.

The only relevant comparison is between the length of the existing route *serving the shipper*, namely, the Pennsylvania route through Hagerstown, entailing the cross-hauling, multiple handling, duplicated expensive terminal switching necessarily incurred in stopping a movement for back-hauling, "with another practicable route which could [fol. 411] otherwise be established," (Sec. 15 (4)), namely, the two direct and shorter routes prescribed. The petition rests upon a misapprehension of the clear wording of the statute.

Again on pages 42-43 the petition repeats the above point, arguing that the Amended Section 15 (4) "contem-

plates" a comparison of the prescribed routes with the direct route of the Pennsylvania which does not come within seventy-five miles of complainant at Hagerstown. Where does the act contemplate any such thing?

The petition (their No. 11, p. 33) is in error where it states that the decision "evades" a finding as to "public interest." The Division decides what is public interest (Sheet 6) and cites three decisions, including one from the Supreme Court, which the Division follows in this case. The petition therefore rests upon a misconception of what the decision of the Division actually does contain.

On pages 35-37 (their Nos. 12, 13) of the petition the above subject is pursued to no purpose in view of what we have said just above. When anyone in this day and age attempts to argue before a public tribunal that "public interest," used by Congress in the exercise of its legislative powers, includes himself and excludes someone else (or excludes anyone), as does this petition, we decline to pursue the matter further.

[fol. 412] The Enforcement of Section 15 (4) is not Dependent Upon the Consent of a Railroad to be Short Hauled

The petition argues (pp. 37-42, their No. 14) that the Commission cannot enforce Section 15 (4) unless the railroad has "*consented to be shore-hauled.*" (Italics theirs.) This needs no reply. The two routes prescribed are established and are of long standing, and traffic for years has passed over them and is still passing over them to a wide range of destinations in the East. The exception is the arbitrary refusal of the Pennsylvania to join in on traffic to its local stations in the Eastern Shore region. The amendment to Section 15 (4) was enacted for the very purpose of giving the Commission power to correct such arbitrary action on the part of a railroad, when it refused its consent to participate in a route found necessary by the Commission. As the Supreme Court said (*infra*) the amendment was enacted to remove the "inconvenience and hardship" to the public.

Their No. 15 is the same as their No. 10, already answered.

The Petitioners Seek to Force the Acceptance of their
Testimony and "Disallowance" of Ours

The petition (pages 44-62 inclusive, their Nos. 16, 17, 18, 19) objects to the treatment of the evidence offered by both sides as to the relative economy and speed of operation over the back-haul round-about route of the Pennsylvania, and the two efficient shorter direct routes prescribed by the Division. In short, petitioners want the Commission [fol. 413] sion to "disallow" complainant's evidence entirely and accept only that of the Pennsylvania's witness.

The Act to Regulate Commerce requires that a full hearing be given both sides, and upon a record so made the Commission *in its discretion* applies the statute to the facts. The Commission cannot be foreclosed from its duty to weigh the evidence in its own judgment. Petitioners want the Commission to "disallow complainant's comparisons." (P. 44) The Commission does not disallow evidence, it considers it, as was done in this case. The petition demands that the Commission "make proper findings." (P. 56) The Division has made proper findings in its discretion upon the whole record before it.

At the middle of page 54 of their petition, they state the schedule of cars from Hagerstown to Salisbury via Enola should be $31\frac{1}{2}$ hours or $24\frac{3}{4}$ hours on two different trains, while the fact is, according to our testimony, that they always took three days or more from Hagerstown, not counting one day lost in switching. Then they admit on the same page that via Western Maryland, Fulton Junction to Salisbury, the time should be $33\frac{3}{4}$ hours, or very little difference. Again on page 55, they state that the requested route would take a day longer to reach Milford, New Jersey, than via the Pennsylvania direct, but they omit the fact that one day is lost in switching to the Pennsylvania.

In support of their argument, the petition recites again the testimony offered by the Pennsylvania witness. But there was adverse testimony from the complainant that the Commission also considered. As an example, attention [fol. 414] is invited to the following evidence adverse to petitioner's contentions.

The average time of a car from Harrisburg via the Pennsylvania through Hagerstown to the eastern shore is three to four days, depending on whether it is on the main line of the Pennsylvania or not. When a car

leaves Hagerstown via Western Maryland for Elsmere, it leaves Hagerstown late in the morning and is at Elsmere the next morning. That is the actual movement. (Rec. 65.)

Exam. Berry: (To witness Thornton of the Pennsylvania.) Do you think it is more economical and more efficient for you to haul 148 miles out of line than it would be to join in the rate and take it on the direct route?

Witness Thornton: I do, because we get 4½ cents a hundred pounds for that 149-mile haul. (Italics supplied.) (Rec. 211.)

Exam. Berry: You are not considering the shipper, then, from an economic standpoint. You are only considering the carrier's interest.

The Witness: Well, I don't know, Mr. Examiner. (Rec. 212.)

In referring to this wasteful back-haul service, the Commission states in the former report herein:

"The justification for the special charge is the uneconomical character of the shuttle service from and to the through route." (146 I. C. C. 615.)

In referring to back-haul, out-of-line routes, the Commission says:

"They can hardly be called through routes, for the traffic moves in and out of Hagerstown over the same [fol. 415] line, and the joint rate applies only with the addition of a back-haul charge for the out-of-line movement." (146 I. C. C. 614, at 615.)

Division 2 recites a general summary of the evidence from both sides. It then in its statutory discretion exercises its power set forth in Section 15 (3) as follows:

"The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes."

Average System Costs Do Not Show the Actual Cost of Handling One Commodity

The petition (Page 29 and also their No. 20, Pages 62 to 77) states as follows: "The report errs in mistreating

and disallowing the evidence of relative costs of transportation over the existing and proposed routes." Our reply to their claims respecting this evidence will be found on pages 31-33 inclusive of our brief and on pages 16-18 of our reply to exceptions to which we refer. The Division carefully considers this evidence (Sheet 9) and definitely shows its lack of value in this case. This evidence is a comparison based on the average system costs of handling all traffic over the three routes here involved. Of course, in obtaining an average system cost the prime factor is the total amount of tonnage on all kinds handled by each railroad. Necessarily when one railroad handles a preponderantly greater tonnage, as is true of the Pennsylvania, the railroad handling the greatest volume produces the lowest [fol. 416] average system cost, and in this case it works out in favor of the Pennsylvania.

"The cost per ton of handling varies inversely, in a marked degree, with the volume transported." (78 I. C. C. 611.)

We wonder if these other railroads, such as the New York Central, the Wabash and others, know what they are getting into if they are really accepting the theory of these alleged costs, which we doubt. Followed to its logical end, it simply means that these other railroads should go out of business because the average system cost *thus used* show them to be uneconomical, inefficient or poorly managed.

Moreover, when it comes to using average system costs, the average system costs on all traffic are made up of many hundreds of different commodities moving in different kinds of equipment, some of it very costly (ours moves in box cars); some of it loading up to 100,000 pounds per car while others load but a small fraction of that amount (ours loading above the average); some of it moving long distances and others but a few miles (ours moving from the grain fields of the west to the seaboard); some of it requiring special and costly service, while others require but a minimum (ours requires a minimum of service); some of it entailing material loss and damage claims while others have practically none (the record shows ours are practically zero); some of it seasonal, while others move regularly throughout the year (ours moving day in and

day out); and many other such items not necessary to enumerate. This attempted application of average system costs on all traffic to a single commodity therefore cannot [fol. 417] be done with the hope of obtaining a worth-while comparison.

This whole argument is based upon a very narrow use of the wording of Section 15 (4). That section requires other considerations such as adequate transportation in the public interest, and this complainant shows the effect of inadequacy of the Pennsylvania route in his business as follows:

"This poor rail service forces us to maintain a trucking service in Delaware and ship via Western Maryland and Reading to Elsmere Junction near Wilmington, Del., and truck to consumer, thus making direct delivery in far less time than is now required under the tariffs for all-rail back haul movement." (Rec. p. 34.)

The above factors prove the truth of the statement of the Commission in 112 I. C. C. 347 that it is difficult, if not impossible, to ascertain "the cost of transporting a particular kind of traffic for a certain distance."

And again, in 30 I. C. C. 597:

"The difficulty is appreciated if even fairly approximating the cost of transporting a unit of freight. Any method employed must necessarily be somewhat arbitrary."

With the foregoing ever-present frailties of cost studies in mind, the attempted application of such evidence to a particular situation as here presented is shown to be honey-combed with inconsistencies. Applying an average cost, itself the result of arbitrary formulas and averages on a vast railroad system, to a comparatively insignificant operation as is here attempted, the result is not even a "mere approximation" of anything.

"Cost studies based upon the average cost of handling all traffic cannot be accepted as showing cost of tonnage of a particular commodity or class of commodities." (129 I. C. C. 25.)

Again, when an attempt is made, as here, to compare average costs of one railroad with the average costs of another railroad, when there is no showing of substantially similar circumstances and conditions of terrain served or commodities handled, volume of traffic, efficiency of managements, or many other really controlling factors, the use of such any attempted comparisons to defeat the administration of Section 15(4) seems inartificial. And that is the basis of the cost evidence offered herein.

There Is No Attack on the 4½ Cent Back-haul Charge

The Petition (their No. 21, page 73) states that the reference in the decision to the added back-haul charge of 4½ cents necessitated by the greater service over the Pennsylvania route is "confusing." The petition incorrectly assumes that the decision is referring to the amount or reasonableness of the charge. The statement in the decision referred to is as follows:

"Yet the Pennsylvania while contending that from the standpoint of operating conditions and operating costs its routes via Enola Yard and Hagerstown are more efficient and economical than other routes via Hagerstown, inconsistently contends and introduced considerable evidence to show that its 4.5-cent out-of-line charge, approximately 17 per cent of the prescribed [fol. 419] rate from Chicago to Salisbury, in addition to the through rates is justified by the out-of-line haul. The justification for a special charge for out-of-line hauls is that routes that require such additional services are not comparable with and are less economical than routes that do not."

The decision is not discussing the reasonableness of this charge. There is no issue as to this charge present anywhere in the Complaint or in our testimony. The reference thereto in the decision is merely to show that the Pennsylvania itself regards its route as so much more costly than the direct routes that it justifies a 17 per cent higher charge than prevails over the direct routes prescribed by the Division. The objection is therefore based upon a misapprehension of the reference to the back-haul charge.

The Movement of 640 Carloads of Feed by Truck Was Forced by the Uneconomical and Inefficient Pennsylvania Route.

The decision states:

"That the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, is evidenced by the fact that in order to meet the demands of customers for prompt delivery, complainant shipped 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction thence by truck to points on the Delmarva Peninsula."

The petition (their No. 22, page 75) asserts that the truck movement was due to a shortage of transit balance. The evidence is that it was due to "poor rail service" and in order to make "direct delivery in far less time" than is [fol. 420] required by the lengthy and inefficient round-about back-haul route via the Pennsylvania.

"This poor rail service (on the Pennsylvania route) forces us to maintain a trucking service in Delaware and ship via Western Maryland and Reading to Elsmere Junction near Wilmington, Del., and truck to consumer, thus making direct delivery in far less time than is now required under the tariffs for all-rail back-haul movement." (Rec. p. 34.)

The reference to the figures of inbound and outbound tonnage on the Pennsylvania are beside the point. The movement via Elsmere Junction is over the rails of the Western Maryland and Reading. There was always a surplus transit balance of Pennsylvania tonnage if and when it was desired to move cars via the Pennsylvania. The figures used at top of page 77 of the petition cover three years while our figure of 640 cars cover one year. Evidence of their figures being wrong is that they show more outbound than inbound tonnage, which is impossible according to transit rules. The petition rests upon a misapprehension of these essential facts of record.

• Their No. C, 1, 2, pages 77-90, dealing with the amended Section 15 (4) is answered in the early pages of this reply.

[fol. 421]

Conclusion

The principle that the public charters these great railroads to serve the public seems to be reversed in this petition. This great interstate carrier (Pennsylvania) is here insisting that this complainant shall be forced away from the railroads forming a shorter through route direct through Hagerstown and be compelled to use the back-haul route of the Pennsylvania, which is actually so uneconomical of operation that the railroad is compelled to demand 17 per cent more to cover its unwanted, unnecessary and expensive service, than is charged by the direct efficient routes prescribed by Division 2.

The theory contended for in the petition may have prevailed prior to the amendment of Section 15(4) but it can hardly be seriously considered today.

As stated by the Supreme Court in *U. S. v. Mo. Pac. Ry.*, 278 U. S. 269:

"Inconvenience or hardships, if any, that result from following the statute as written must be relieved by legislation. It is for Congress to determine whether the Commission should have more authority in respect of the establishment of through routes."

Following out the court's decision, the Commission, acting under Section 21 of the act which authorizes the Commission to recommend "such additional legislation as the Commission may deem necessary," recommended the amendment to Section 15 (4) to remove the "inconvenience and hardship" to the public referred to by the Supreme Court.

[fol. 422-424] The decision of Division 2 herein is a faithful administration of the amendment to Section 15 (4). The complainant respectfully requests that the petition herein be denied.

Respectfully submitted, (Signed) C. R. Hillyer, Attorney for Complainant, Field Building, Chicago, Illinois.

Dated at Chicago, June 23, 1943.

Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceed-

ing by mailing a copy thereof properly addressed to each party. Dated at Chicago, Illinois, this 21st day of June, 1943.

(Signed) C. R. Hillyer.

[fol. 425-428] BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 28647

[Title omitted]

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 4th day of October, A. D. 1943.

ORDER DENYING PETITION FOR REARGUMENT AND RECONSIDERATION—October 4, 1943

Upon further consideration of the record in the above-entitled proceeding, and upon consideration of petition of defendants for reargument and reconsideration:

It is ordered, That said petition be, and it is hereby, denied.

By the Commission.

W. P. Bartel, Secretary.

[fol. 429] BEFORE THE INTERSTATE COMMERCE COMMISSION
Docket No. 28647

D. A. STICKELL & SONS, INC., Complainant,

v.

THE ALTON RAILROAD COMPANY, et al., Defendants

STENOGRAPHER'S MINUTES OF HEARING—September 10, 1941

[fol. 430] Hearing Room "C," I. C. C. Building

Washington, D. C., September 10, 1941.

Met, pursuant to notice, at 10 o'clock, a. m.

Before: C. W. Berry, Examiner.

APPEARANCES:

C. R. Hillyer, Field Building, Chicago, Ill., appearing for the complainant.

Francis R. Cross, B. & O. Building, Baltimore, Md., and

Joseph F. Eshelman, Broad Street Station Building, Philadelphia, Pa., appearing for the Defendants other than the Western Maryland Railway.

R. V. Craig, 3400 Board of Trade, Chicago, Ill., appearing for Allied Mills, Inc.

[fol. 431-434]

PROCEEDINGS

Exam. Berry: The Commission has set for hearing at this time and place Docket 28647, entitled "D. A. Stickel & Sons, Inc., v. The Alton Railroad Company, et al."

Who appears for the complainant in the case?

Mr. Hillyer: C. R. Hillyer, Field Building, Chicago, Ill.

Exam. Berry: Who appears for the defendants?

Mr. Eshelman: Francis R. Cross, B. & O. Building, Baltimore, Md., and Joseph F. Eshelman, Broad Street Station Building, Philadelphia, Pa., except the Western Maryland. We appear for all defendants except the Western Maryland.

Exam. Berry: Is there anyone here representing the Western Maryland?

I presume a free copy of this record is to go to Mr. Hillyer for the complainant, and who for the defendants?

Mr. Eshelman: Well, you may send it to me. We will cooperate.

Exam. Berry: Mr. Eshelman. All right.

By complaint filed April 9, 1941, it is alleged that the complainant is denied reasonable through routes and joint rates on grain, grain products, and grain by-products from origins in Ohio, Indiana, Illinois, Wisconsin, Iowa, Minnesota, Omaha, Nebr., and Missouri, milled and mixed into flour, livestock and poultry food, at Hagerstown, Md., and [fol. 435] the manufactured products reshipped to destinations in New England and Trunk Line territory.

The Commission is requested to prescribe reasonable and non-prejudicial through routes and joint rates via Hagerstown, and a reasonable transit arrangement to Hagerstown.

Is that correct?

Mr. Hillyer: I think that correctly states the issue; yes, sir.

Exam. Berry: Is that your understanding, gentlemen?

Mr. Cross: Yes, sir.

Mr. Eshelman: I think the charge is that the existing routes are unreasonable. It is my understanding.

Exam. Berry: I did not so read the complaint.

Well, I will say it this way, that as I read the complaint the allegation is not that the present routes are unreasonable but that Hagerstown—the complainant at Hagerstown is denied reasonable and non-prejudicial routes via that point.

Mr. Eshelman: Well, I just wanted to make the point that the charge, so far as the pleading is drawn, relates to charges of violation of section 5, but there is the reference to non-prejudicial routes only in the prayer.

Exam. Berry: That is true.

Are you ready to proceed, Mr. Hillyer?

Mr. Hillyer: Yes, sir.

I will ask that Mr. Fulde be sworn.

[fol. 436] J. C. FULDE, being first duly sworn, testified as follows:

Direct examination.

Mr. Hillyer: This witness' name is J. C. Fulde.

By Mr. Hillyer:

Q. Mr. Fulde, where do you now reside and what is your present occupation?

A. I have been associated with D. A. Stickell & Sons, Inc., since January, 1924. My official title is that of vice-president. I have supervision of the purchase of the raw materials and the sale and distribution of our manufactured feeds.

Q. Mr. Fulde, what has been your experience that qualifies you to testify as a witness in this case.

A. Before joining D. A. Stickell & Sons, Inc., I was associated with the Quaker Oats Company 21 years, and the American Hominy Company one year. During all these years I have been associated with the manufacture and distribution of manufactured feeds. I have seen this industry grow from scratch to one of the important industries of the country and one that is the source of much revenue to the railroads of the country.

Q. You gave your qualifications, did you?

A. Yes.

Q. Now, what business has the complainant engaged in?

A. We are engaged in milling and mixing grains, grain products, and grain by-products into mixed livestock and poultry feeds at our plant at Hagerstown, Md.

[fol. 437] By Mr. Cross:

Q. Also flour; isn't that right? I understood the Examiner to state.

Exam. Berry: I did so state, but I am not sure whether the complaint contained that or not. I stated that in the reading of the issues, that you milled flour there.

By Mr. Hillyer:

Q. I think flour goes out; doesn't it?

A. Our flour mill was destroyed some years ago by fire, and we haven't rebuilt that part.

Exam. Berry: All right, I am glad to have that cleared up.

By Mr. Hillyer:

Q. Now, Mr. Fulde, will you describe the development of the mixed feed business?

A. The manufactured feed industry has done much to improve conditions of both the farmers and the city workers. Through its scientifically blended feeds it has enabled the farmers to increase their production of eggs, poultry, milk, butter, meat, fat, et cetera, and it has made these products available to the city dwellers in a constantly increasing manner.

In the past 25 years much has been learned about the nutritional requirements of poultry, dairy cattle and live stock. The feed manufacturer has incorporated these important findings in the feeds that he manufactures. Years ago when little was known about the actual feed requirements of poultry and livestock the farmer fed largely the grains that he raised and bought very little in the way of feeding [fol. 438] stuffs. Today an average ration for poultry, dairy cattle, hogs and other live stock will contain about fourteen and even more ingredients. This means that the feed manufacturer must assemble this wide variety of materials and blend them into the various manufactured feeds. He must draw upon all sections of the country for these many different materials.

These materials are varied. Soybean oil meal, though a comparatively new product, is used by us in a very large

way, namely, about 9,000 tons yearly. It is a by-product resulting from the extraction of oil from soya beans. This product is secured principally from plants in Ohio, Indiana, and Illinois.

Gluten feed and gluten meal, of which we use about 9,000 tons yearly, is a by-product resulting from the manufacture of corn starch and corn syrup. These are secured principally from plants located in Illinois, Indiana, and Iowa.

Wheat bran and wheat middlings, of which we use about 15,600 tons yearly, are by-products resulting from the manufacture of flour. These we draw principally from Kansas, Missouri, Minnesota, Illinois, Indiana, and Ohio.

Linseed oilmeal, of which we use about 1,000 tons yearly, is a by-product resulting from the extraction of oil from flax seed, comes mostly from Ohio.

Dried skim milk and dried whey, of which we use about 1,500 tons yearly, comes principally from California, Wisconsin, New York, and Pennsylvania.

[fol. 439] Corn, of which we use about 1 $\frac{1}{4}$ million bushels yearly, in addition to being secured from farmers and elevator men in Cumberland Valley, is also secured principally from Ohio, Indiana, Illinois, and Iowa.

Some of the other materials we use in a large way are milo maize and kafir corn, which comes principally from Kansas and Oklahoma.

Dried corn distillers grains, a by-product from the manufacture of whisky, comes principally from Kentucky.

Dried brewers grains, a by-product of the breweries, comes principally from Pennsylvania, Ohio, and Wisconsin.

Cottonseed meal, a by-product resulting from the extraction of oil from cottonseed, comes principally from North Carolina, South Carolina, Georgia and Tennessee.

This is only a partial list of the materials we use and their source of supplies but they indicate the importance of the manufactured feed industry to the railroads and why it is that the railroads should cooperate with the feed manufacturer.

Q. Now, I understand from testimony you have just given that you did it partly for the purpose of contrasting the old conditions when the farmer fed his local grains and products right on his farm, without any transportation charge, and the present mixed feed business, which requires the transportation by rail on a transit practice of vast tonnages of these raw materials, is that true?

[fol. 440] A. Yes.

Q. What are the two principal items entering into the cost of manufactured feeds in the way you have described?

A. The two principal items entering into the cost of manufactured feeds are the raw materials and the freight charges. The margin of profit on a ton of manufactured feeds is very small.

Q. Now, Mr. Fulde, what can you say of the location of Hagerstown as a point for feed manufacture?

Mr. Hillyer: This witness is not a traffic witness. He is a commercial witness. We have another traffic witness.

A. Hagerstown is well located for a plant devoted to the manufacture of feed. It is a gateway to the North and the South. It is served by four railroads, Western Maryland, Pennsylvania, Baltimore & Ohio, and Norfolk & Western.

Q. Would you say that your location is an asset to the farmers of that community?

A. We are performing a service to the farmers of the Cumberland Valley by making a market for their crops of corn, barley, buckwheat, etcetera, and it is of great importance to the maintenance of the economical life of this valley that all handicaps interfering with the operation of a commercial mixed feed plant at Hagerstown be removed.

Q. Now, referring to the markets that are served through [fol. 441] Hagerstown, just give a general description of them, will you?

A. Our potential markets for the distribution of our manufactured feeds are the States of Maryland, Eastern Pennsylvania, Virginia, Delaware, New Jersey, and the New England States. It should be possible for us to reach every point in this territory but because of the lack of proper through routes we are not able to do so.

For instance, we cannot sell the trade in Baltimore who require Pennsylvania Railroad delivery. The same is true of Washington, D. C., and hundreds of points in Maryland, Pennsylvania, New Jersey, Delaware, Virginia, and the New England States.

It is this lack of proper through routes that places us at a great disadvantage compared with our principal competitors, and we might mention as an illustration those located in Lancaster, York, and Pittsburgh, Pa.; Buffalo, N. Y.; Cincinnati, Toledo, Cleveland, and Akron, Ohio;

Fort Wayne and Indianapolis, Ind.; Chicago, Ill.; St. Louis and Kansas City, Mo.; Cedar Rapids and Davenport, Iowa; Minneapolis, Minn.

Exam. Berry: Mr. Hillyer, the routes to Virginia are not in issue here; are they?

Mr. Hillyer: No. He was giving a general picture of his business there.

There is a little tip down on the Eastern Shore of Virginia that is quite important to this man.

[fol. 442] By Mr. Hillyer:

Q. Now, that completes your testimony on direct, doesn't it?

A. Yes.

Mr. Hillyer: You may cross-examine this witness.

Exam. Berry: Mr. Hillyer, do you wish to amend your complaint to include that part of Virginia? I do not think Virginia is mentioned as a destination territory here.

Mr. Hillyer: Is that so?

Exam. Berry: I am not sure.

Mr. Hillyer: Yes, that is very important.

Exam. Berry: No objection to amending the complaint to include it, is there, gentlemen?

Mr. Cross: No, sir. He does not mention Delaware, either.

The Witness: We should include Delaware, Eastern Shore of Maryland.

Mr. Hillyer: I tell you, I think it is covered on top of page 5, Mr. Berry, "Down the Eastern Shore of Maryland to Cape Charles, Va."

Mr. Eshelman: I think that is adequate, Your Honor.

Mr. Hillyer: I know I had it in mind because this man's plant is peculiarly located to serve those people down there, and they are a valuable market to him.

Exam. Berry: As I read it, it simply told where he shipped more as a historical question, but was not mentioned in the destinations; but I understand now it may be understood [fol. 443] that that does specify the destinations in the complaint.

All right.

Mr. Eshelman: You were referring to the Eastern Shore, were you not, Mr. Examiner?

Exam. Berry: The Eastern Shore of Delaware, or any other point that is not mentioned in—I do not see the paragraph I had in mind now.

The Witness: I think it is paragraph 5 you had in mind.

Exam. Berry: Paragraph 5. All right.

Cross-examination.

By Mr. Eshelman:

Q. Do you know, Mr. Fulde, how long the complainant has been in operation at Hagerstown?

A. Mr. Stickell started in, I believe, in the year 1883, if I am not mistaken.

Q. And was he then on the Western Maryland tracks, do you remember?

A. I do not know.

Q. Well, what is the inbound rail tonnage received by the complainant in the course of a year? I refer, of course, to the materials that you employed in your operations? I do not mean coal, for instance.

A. Well, I believe you had better ask that of our traffic man because he may keep a record of all our inbound tonnage.

Q. Is he going to testify?

A. He is going to testify, yes. You may ask him that.

[fol. 444] Q. You do not know approximately what your inbound tonnages by rail would be?

A. The traffic man keeps a record of that because we have a certain amount of farm grains we receive from the farmers and we have parts by rail, and, as I understand, he keeps a record.

Q. He will know how much comes in by rail and how much local receipts?

A. I imagine he will be able to approximately give you that information.

Q. Is that true also of your outbound rail movements and outbound truck movements?

A. Well, I suppose he would be able to give that same answer. The thing that I would know is our total sales. That is what I am interested in. Then when it comes to breaking down into trucking of traffic, of course that is not under my supervision.

Q. Do you have the total sales by tons?

A. I do not have it exactly. I can give it to you approximately. It is approximately 60,000 tons.

Exam. Berry: A year?

The Witness: Yes, sir, about 60,000 tons a year.

By Mr. Eshelman:

Q. That would be the production?

A. That is about the shipments that we make, either by rail or by truck.

[fol. 445] Q. And you do not have the separation of that?

A. No, I do not have that.

Q. And in what territories or sections can you state more specifically does the bulk of that tonnage go?

A. Eastern Pennsylvania, Eastern Shore of Maryland-Delaware, Eastern Shore of Virginia, and we also distribute in New Jersey and New England States.

Q. And is that your chief distribution; for instance, is the South a heavy distributing section for you people?

A. No, sir; not south of Virginia, not below Virginia.

Q. That is, not into the Carolinas?

A. No, sir.

Q. But into Virginia, you get in there pretty well?

A. We get into Virginia, yes.

Q. Do you get into New York State?

A. Very little.

Q. Long Island?

A. Well, we are not doing very much business there at the moment because we haven't opened up that territory, but Long Island would be available for us.

Q. Without backhauling, out of route charge?

A. Well, I could not answer that because that is a traffic question.

Q. About what proportion of your production would you say goes into the Eastern Shore?

[fol. 446] A. I think it would be between 50 to 60 percent.

Q. As I understand your testimony, your inbound raw materials do not consist only of grains but may consist in part of such things as bran, middlings, and other grain products; is that right?

A. Yes, sir; grain by-products. Grain and grain by-products; a good many materials I mentioned like cotton-seed meal are by-products.

Q. And do you receive such products to an important extent from points in Central territory, such as Cleveland or Indianapolis, or places of that sort?

A. It comes from—those products come from Ohio, Indiana, Illinois, Wisconsin, Michigan, Missouri.

Q. And are those products of mills at those points which process grain in its more natural or original form?

A. Mostly the materials we buy, we buy right direct from the mills that process those materials; we buy very little through a broker or second or third person.

Q. Will you say that the principle which complainant here asks to have established is that if its milling point can be situated on any through routes that are reasonably direct that it thinks that it should have the through route established via that milling point in order that it might transit upon it?

A. That is a long question and it—suppose you give that over again, a little more slowly.

[fol. 447] Q. As I understand it, complainant asks that through routes be established from these western points to destination territory where you market your product. Complainant asks that those routes be established through Hagerstown in order that complainant may transit the grain at that point; that is, that you may have an in-and-out movement on a through route; that is correct, isn't it?

A. We are asking these other routes so that we will have a reasonable route upon which there will be no back haul.

Mr. Hillyer: I think, Mr. Eshelman, the next witness will explain those routes to you.

Mr. Eshelman: Yes. It was more the principle that I was interested in here. I did not mean to go into detail with this witness.

Q. In your opinion are you seeking any preferential treatment in this case?

A. Absolutely not.

Q. From your standpoint will you think it proper—if the Commission should grant what you people seek here would you think it proper that other millers and feed mixers throughout the east, we will say, should have similar treatment so far as establishment of routes is concerned?

A. They practically all have that and we are simply seeking what they have.

Q. You think most of the others have that, is that right?

A. Practically all of them, yes.

[fol. 448] Q. What advantages does the feed mixer nearer the point of destination have, if any, as compared with a feed mixer a greater distance, for instance take your situation as against that of Kansas City, do you have any advantage that he does not?

A. We ought to look at this thing from a broad picture. Hagerstown is located in the Cumberland Valley, which is one of the richest grain growing sections of the country. A market should be found for those materials. If there is no mill located in Hagerstown such as ours it would be difficult for the farmers to find a satisfactory market for the grains that they raise.

So that taking a mill at Hagerstown we are not only serving the section where we think is our natural territory economically and satisfactorily, but we are also serving the farmers of the community from which we draw some of our grains.

Now, I might mention there, if you want me to, if you go back to the history of the Cumberland Valley you will find that many years ago they raised principally wheat which was milled into flour. Since the milling business has changed, the flour milling business has changed, there is [fol. 449] less market for the wheat, consequently it has been advisable for the farmers to raise other grains, and that is where we come in by finding a market for those grains which they can raise for which there would be a market.

Q. What are those grains mostly?

A. Those are mostly corn, barley, buckwheat, and we also use some wheat.

Q. Would you say that the more eastern miller has a certain advantage over the western millers in being closer to markets so far as making faster shipments are concerned?

A. Well, I would say yes, because we have such shorter hauls.

Q. Are you familiar with whether generally the western miller might have a narrower origin territory to draw from than the more eastern miller?

A. Naturally he would. He naturally would, because we have all the sections west of us to draw on and he does not.

Q. On the other hand, it might be that your destination

territory would be slightly less broad than his; isn't that true?

A. We have less territory to sell in, but we have a wider territory to draw from.

Q. I think you gave the location of a certain feed mixing companies in the East, but I am not sure. Were there any that you did not mention that you should include?

A. Oh, I don't know. I just simply gave you those as examples, that is all. I did not try to give you the list of [fol. 450] all feed manufacturers, just some of them.

Q. Do you know whether there are any in the Norfolk district?

A. In the what?

Q. In the Norfolk district.

A. I believe the Southern States may have a mill in Norfolk.

Q. Does Allied Mills have a plant somewhere in that section?

A. They may process soy beans, but I am not so sure they have any manufactured feeds. They may process soy beans.

Q. Is there any plant at Wilmington, do you mean?

A. The Purina Mills, I believe, have a plant at Wilmington, Del.

Q. To what extent do these other millers have more than one plant?

A. It varies. Just the other day I read that G. L. F. in Buffalo have decided that they are going to decentralize their business.

The fact that there are communities where grain is raised that should be marketed makes it, I think, an advisable matter to have feed mills located, and some of these larger mills who probably at one time thought of centralizing all their plants in one or two, may begin to decide on a decentralizing idea. I notice that G. L. F. just within a week or so decided that their plan would be to decentralize.

Q. Do you know whether or not Allied Mills has more than one plant in Official territory?

[fol. 451] A. I do not know where all their plants are located. I know their office is in Chicago and their business is varied. I could not tell you that.

Q. You spoke of a manufacturer, I believe at Lancaster. Does that manufacturer have plants at other places, do you know?

A. Yes, sir.

Q. What other points?

A. He has a plant at York, Pa., one at Circleville, Ohio.

Q. Is there any territory available to you as a distribution territory where you have an advantage as compared with other millers?

Exam. Berry: Advantage of what? Rates or what.

Mr. Eshelman: Yes, in distribution.

A. I do not think we have any advantage over anyone.

By Mr. Eshelman:

Q. You do not think you do?

A. I do not think so, no. We might probably within a few miles away of trucking, but—

Exam. Berry: He is speaking in connection with the railroads.

The Witness: Yes.

Exam. Berry: Railroad rates; do you have any advantage in rates?

The Witness: No, we do not. If anything, we have a disadvantage. That is what we are trying to correct.

By Mr. Eshelman:

Q. You think you are the only one that is sinned against? [452] A. Oh, I would not say that.

Q. Is it true, Mr. Fulde, that if these routes were established, which the complaint seeks, that you would put an increased proportion of products into the destination territory?

A. Of course that is hard to say because we cannot anticipate what competitive conditions would be; but it would place us in a better competitive condition.

Q. The advantage, however, that you spoke of to the growers or receivers of grains and feeds in your territory, the advantage which you described to accrue to them would be dependent, would it not, upon the extent to which you did increase your tonnage?

A. As I indicated, we draw not only corn, materials—that is, in other words, our local farmers do not raise enough to take care of us, but if we were eliminated then our local farmers would have the difficulty of finding a good market for their corn, because we are the principal users of the corn in that section.

Q. You do not think that we want to eliminate you, do you?

A. What is that? Well, I do not think—

Q. It is true, however, is it not, that to the extent that your proportion of the final consumption would be increased, that of someone else would be decreased; that follows, [fol. 453] doesn't it?

A. As I told you before, we cannot tell that there is going to be an increase because of competitive conditions.

Q. I understand.

A. Yes. So we just simply have no thought of increase. That has not been the thought at all. We just simply want to eliminate what we think is a disadvantage.

By Mr. Cross:

Q. Mr. Fulde, you explained to Mr. Eshelman that as between you and your western competitors that the western competitors have an advantage in destination territory but the disadvantage in origin territory, whereas you have an advantage in origin territory but a disadvantage in destination territory. That was your explanation to Mr. Eshelman, was it not?

Exam. Berry. I think that was contingent upon whether they got the through routes; after they got the through routes that condition would be true.

Mr. Cross: No.

Mr. Eshelman: That as to the present time.

Exam. Berry: All right. Go ahead.

A. The point was since we are east, the territory east, of course, is much smaller. Take a mill, for instance, in Kansas City. They have a territory from Kansas City to the Atlantic Coast, so they have a wider territory in which to dispose of their products; but a mill in Kansas City would not be able to buy bran or middlings in Ohio. [fol. 454] We would be able to take advantage of that market in buying, but we do not seek to ship our product in Ohio. We are not seeking that.

By Mr. Cross:

Q. So my statement was substantially correct, was it not?

A. Yes, sir.

Q. Is it also true that you have a commercial advantage in that the users of feed like to buy feed that has been freshly made as against feed which has been manufactured at some far western point?

A. No, I would not say that, because any feed that was shipped direct from a mill, no matter where it was located, would be considered fresh feed.

Q. You do not recall testimony in the former hearing to the effect that the consumer prefers to buy freshly made feed from the East as against feed manufactured at these western mixing points?

A. As I said, any feed is fresh that is milled in Kansas City or Chicago, and, freshly milled, it would be considered a fresh feed. Feed that would probably have laid in a warehouse, they might have some objections to that.

Q. You do not recall testimony to the effect as I stated, do you?

A. I do not recall that.

Q. Now, let us confine ourselves to your competitors in [fol. 455] the East, and you named competitors at Lancaster and York.

Now, you say that those millers have precisely what you are seeking.

A. I understand that.

Q. Will you go further than that and say that you are not seeking anything which other millers do not have?

A. We are not seeking any advantage over anyone.

Q. Then, I understand that you are answering my question as "yes."

A. Well, yes. The way I understood your question would be to indicate that we might seek an advantage, but we are not seeking an advantage.

Q. No.

Exam. Berry: No. The question is this, if you are mistaken as to what privileges and rights they have, are you then seeking any more than they are asking for? If they have not got it, you do not want it?

The Witness: We are not asking for it, no.

Exam. Berry: Is that true if some of them have it and some do not, you are not asking for it, or you are asking for it?

The Witness: The mills that were mentioned there, we are just simply asking for the same thing that they have.

Exam. Berry: All right.

By Mr. Cross:

Q. That is what I understood you to say, that you are [fol. 456] asking for what the other millers in the Eastern territory have, and you named as representative competitors Lancaster and York.

Now, will you state to me a single competitor of yours who is similarly situated as you are who has what you are asking for?

A. Well, I—that would be a traffic question. I would not be able to answer that.

Q. Well, I thought that you had covered it in your broad statement.

Now, let us take this miller at York who is a competitor of yours. Now, he has, you say, transit on shipments destined to points on the Western Maryland, Delmar, Md., or Western Maryland?

A. I could not tell you that because you are beginning to ask me transit questions; I could not tell you that.

Q. You said you are not asking for what the others did not have.

A. You brought in Western Maryland. We are asking routes that will eliminate the back haul that we have on the Pennsylvania Railroad.

Q. But are you not at present treated precisely the same as other millers who are situated on a single line of railroad, in that you have transit to destinations at the flat rate to destinations on the railroads on which you are situated, [fol. 457] where your competitors have transit at the flat rate only to destinations on the railroad on which they are situated?

A. What I know is this, that those, if they are located on the Pennsylvania at Lancaster or York they do not have the disadvantage that we do.

Exam. Berry: To destinations on the Pennsylvania.

The Witness: Yes.

Exam. Berry: But how about destinations on other carriers?

By Mr. Cross:

Q. To destinations on Western Maryland, they have a disadvantage which you haven't got; haven't they?

A. Well, that is a traffic question, because I would not know, for instance, what arrangements they have at Lancaster for their shipments to points on Western Maryland. See, the Western Maryland, I do not believe goes to Lancaster.

Q. No. As I understand it, both Lancaster and York, the miller is on the Pennsylvania and he has a disadvantage in that he cannot have transit at the flat rate to destinations on the Western Maryland.

A. That is because he is too far east, then, for those points.

Q. He is no farther east than you are, is he?

A. But he is east, as I understand it, he is east of the eastern termini of the Western Maryland Railroad.

Q. Well, is it not a fact that you are asking for the extension to your company of a principle which does not apply [fol. 458] at any of your competitors' eastern territory?

A. Well, that is a question I do not believe I would be qualified to answer.

Mr. Cross: Thank you very much.

By Mr. Cross:

Q. Now, just one question about this corn from points in the Cumberland Valley.

Is it my understanding that you would move that corn into Hagerstown by railroad and mill it into feed, and then ship it out to some of the destinations that you have in mind, and in the outbound movement you would apply your inbound corn against the billing?

A. Most of the corn that we receive at Hagerstown is trucked in to us, and we apply that trucking tonnage against what is trucked out.

Q. So this corn has nothing to do with your railroad movement?

A. We could, if there was enough received—in other words, if the inbound tonnage of corn from the farmers was so large that it exceeded what we would truck out, then we would ship that on a local rate of freight.

Q. You are not seeking rates from these Cumberland Valley points, are you?

A. No, no.

Mr. Cross: I have nothing further. Thank you.

Exam. Berry: Mr. Fulde, this Lancaster and York—have you transit at the grain rates on soy bean meal, linseed oil [fol. 459] meal, I believe you describe it, dry skimmed milk, cottonseed meal when mixed with grain products?

A. There would be only those two meals, excepting dried skim milk and dried wheys. I understand that those two products do not carry milling-in-transit privilege, but we are permitted to include a certain amount in our feeds.

Exam. Berry: But the milling-in-transit privilege does include cottonseed meal?

The Witness: Yes.

Exam. Berry: And soy beans, distillers' grains.

The Witness: Yes, sir.

Exam. Berry: Brewers' grains?

The Witness: Yes, sir.

Exam. Berry: And they move out at the grain product rate?

The Witness: Yes, sir. Whatever the milling-in-transit rate is.

Exam. Berry: All right. That is all I have.

Mr. Craig: Mr. Examiner, unfortunately I was delayed at the beginning. My name is Craig, of Allied Mills. I have an intervening petition I would like to file at this time.

Exam. Berry: You may distribute the others.

Mr. Craig, are you intervening in support or opposition to the complaint?

Mr. Craig: I am intervening, Mr. Examiner, to protect the Allied Mills' interest as that may appear here. I am not [fol. 460] supporting either complainant or defendants.

Exam. Berry: Do you want to participate in cross-examination?

Mr. Craig: Yes, sir.

Exam. Berry: Then you will have to state your position. You cannot cross-examine first on one side and then the other.

Mr. Craig: Of course, Mr. Examiner, I have heard that discussed before.

Exam. Berry: Well, that is my ruling now. You will have to either state your position or you will not be permitted to

cross-examine. If you later on feel that you can state your position, and then want to participate, all right, but we must know what your interests are here to know to what extent you participate.

Mr. Craig: Mr. Examiner, my interest is this, that I have a feed plant, regardless of what Mr. Fulde said, at Portsmouth, Va., and we would like to have through rates from points in the West via Portsmouth, Va., to the Eastern Shore. As an illustration, the Pennsylvania Railroad points on the Eastern Shore. Mr. Fulde, the complainant here, is attempting to obtain through rates from Hagerstown, Md., to points on the Eastern Shore specifically. Obviously, I have an interest, or my company has an interest in the proceeding. We want the same things that the complainant wants, but I do not see how I could possibly inter-[fol. 461] vene in behalf of the complainant in the case, and certainly I am not intervening in behalf of complainant. I am here to protect Allied Mills' interest.

Mr. Eshelman: It looks like he is against the both of us.

Exam. Berry: Let's see if I can yet your position clear.

You are here to prevent any undue preference or prejudice against you; is that right?

Mr. Craig: Yes, sir; that is correct.

Exam. Berry: And then you are only appearing in so far as your interest may be unduly prejudiced.

Mr. Craig: That is correct.

Exam. Berry: Then, you may be permitted to participate to that extent.

Mr. Eshelman: May I also suggest, if the complainant gets the door open he wants to go through it.

Mr. Craig: If I do, I assure you I will file a formal record.

Exam. Berry: All right, Mr. Hillyer.

Mr. Hillyer: That is all with this witness.

(Witness excused.)

Exam. Berry: I do not know, gentlemen, whether I made a formal ruling or not, but this petition for intervention is permitted, and Mr. Craig will be known as appearing for the Allied Mills.

Mr. Hillyer: I will call Mr. Stickell.

[fol. 462] H. K. STICKELL, being first duly sworn, testified as follows:

Direct examination.

Mr. Hillyer: This witness' name is H. K. Stickell.

By Mr. Hillyer:

Q. Mr. Stickell, where are you employed and how are you employed?

A. I am located at Hagerstown, Md., and have been with the complainant since 1903 and handle all traffic matters along with certain other duties connected with this business.

Q. Describe the transportation characteristics of the commodities here involved.

A. The commodities handled in the milling and mixing of grain and feeds load heavily into the plant; grain as a rule to the marked capacity of the car and feed for mixing averaging 30 tons a car. The loss and damage claims in our business are negligible, amounting to practically nothing. All outbound products are loaded in the same cars from which grain or feed have been unloaded, resulting in the greatest economy to the carriers.

Q. Now, please describe the location of Hagerstown from a transportation standpoint.

A. The situation of Hagerstown, located in the East, has the advantage to the railroads of using heavily loaded cars from Central territory and farther west to Hagerstown, Md., while on the outbound movement to our customers the haul is relatively short, averaging 200 miles. We load whatever the customer orders, which averages about 23 tons per car outbound. Corn, which comes principally from Illinois and Iowa, arrives at Hagerstown in 42 to 50-ton cars, thus making one car do the work that two cars would do on a long haul of feed from the western manufacturer to his customer.

From the western mills, the situation is reversed. The short haul is on the heavier loading grain, and the long haul to the eastern markets is on the lighter carloads of feed.

Q. Mr. Stickell, will you describe the location of the plant in Hagerstown?

A. Our plant is located on the main line of the W. M. Railroad and the service required is very simple and inexpensive. The switch movement from the Pennsylvania Railroad is about one-mile distant. See Exhibit No. 1.

Exam. Berry: Remember, none of these exhibits have been identified or offered for evidence.

Mr. Hillyer: Excuse me. I will offer these five copies now for identification, please.

Exam. Berry: And have the witness describe them as he takes them up.

Mr. Hillyer: Yes.

Exam. Berry: All right. Just describe your exhibit instead of referring to it by number.

Mr. Hillyer: I will tell you, he has his testimony pre-[fol. 464] pared so he will describe them as the exhibit fits into his testimony.

(Exhibit No. 1, Witness Stickell, marked for identification.)

By Mr. Hillyer:

Q. Now, you are going to take up Exhibit 2 and describe the movement when the traffic comes into Hagerstown over the Pennsylvania Railroad and goes out.

(Exhibit No. 2, Witness Stickell, marked for identification.)

A. Well, Exhibit 2 shows a map, showing the Pennsylvania Railroad movement from Pittsburgh, which is a representative point, through Hagerstown to the Eastern Shore. Is that sufficient?

Exam. Berry: That is marked at the bottom "Route with back haul to Hagerstown, Md."

The Witness: Yes.

Exam. Berry: All right.

The Witness: It shows on there Pennsylvania.

In order to make delivery to customers located on the Pennsylvania Railroad under the present tariffs, we must get tonnage from Central territory or Buffalo territory moving Pennsylvania Railroad to Harrisburg, Pa., then via Cumberland Valley Branch of the Pennsylvania Railroad 73 miles to Hagerstown, where it is mixed in transit, hauled 73 miles back to Harrisburg, Pa., and Pennsylvania [fol. 465] Railroad to its destination. Ninety percent of our Pennsylvania Railroad tonnage goes to the Eastern Shore of Maryland, Virginia, and the State of Delaware.

Q. Now, does the movement just described slow down the operation?

A. Yes. This back-haul movement slows down the delivery time three or four days, making considerable extra and unnecessary hauling, and costs us 90 cents per ton back-hauling charges, while our competitors can reach any destination in the East on the Pennsylvania Railroad at regular through rates or 90 cents per ton less than we can.

Mr. Cross: Just a moment. I think that the Allied Mills just stated to the contrary, didn't they? I understood the statement of the representative of the Allied Mills was that he could not reach the Eastern Shore, either, from Portsmouth.

Exam. Berry: Well, we can take that up.

Go ahead. I do not know whether that is correct or not because he was not under oath and was not testifying.

Mr. Hillyer: All right.

By Mr. Hillyer:

Q. Go on.

A. Cars for Eastern Shore of Maryland and Virginia and Delaware, via Pennsylvania Railroad, take three or four days to reach destination. This poor rail service forces us to maintain a trucking service in Delaware and ship via West and Reading to Elsmere Junction near [fol. 466] Wilmington, Del., and truck to consumer, thus making direct delivery in far less time than is now required under the tariffs for all-rail movement.

Q. How much tonnage moved over this rail and truck route in 1940? And how much moved all the way over the Pennsylvania Railroad and paid the back haul?

A. In 1940 we shipped 640 cars of feed out of Hagerstown via the Western Maryland to Shippensburg, Pa., thence via the Reading to Elsmere Junction, Del.; thence via truck to consumers on the Eastern Shore of Maryland, Virginia, and Delaware.

During the same year, we shipped 675 cars via the Pennsylvania Railroad to destinations on the Pennsylvania Railroad, on which the back haul charge between Hagerstown and Harrisburg was paid.

Q. Now, Mr. Stickell, does complainant seek any change in existing rates and transit charges, or back haul charges?

A. No. Western Maryland Railroad and Pennsylvania Railroad have transit tariffs applicable at Hagerstown similar to tariffs at other points in Trunk Line territory.

None of the rules or charges in either tariff are involved in this case.

We now have transit practices and through routes and rates under applicable tariffs as follows—see Jones 245-G I. C. C. 3356 and Jones 470-B I. C. C. 3490.

Exam. Berry: Are you going to tell us what routes you have?

[fol. 467] The Witness: Yes. I am going to tell them now. That was just referring to the tariffs.

We now have from Central territory, route No. 1 from Central territory and beyond on New York Central and connections with P. & L. E., Western Maryland to destination points east of Hagerstown on Western Maryland-Reading & Central Railroad of New Jersey.

Route No. 2, Wabash and its connections, W. & L. E.-P. & W. V.-W. M. to points on the Western Maryland-Reading-Central Railroad of New Jersey, and points on the New Haven Railroad in Massachusetts and Connecticut.

Route No. 3. B. & O. and connections, Cherry Run, W. Va., Western Maryland to the same points as the Wabash route.

Route No. 4. Pennsylvania Railroad and connections to points east on the Pennsylvania Railroad plus back haul charges.

Route No. 5. Pennsylvania Railroad from Buffalo to points east on the Pennsylvania Railroad plus back haul charges.

Q. Now, Mr. Stickell, in what rate group is Hagerstown on traffic from the West?

A. Hagerstown is on the Baltimore rate group on traffic from Central territory and most of the destination points are in the New York rate group, which is 3 cents higher.

We are not attacking any of these rates, but only seeking to have the joint rates named in Jones' tariff, 245-G, [fol. 468] I. C. C. 3356 on grain and feed made applicable via Hagerstown, in order to be on an even basis with our competitors at the going through rates, thus eliminating the back haul charges already described.

Q. Describe what you call the so-called Pittsburgh Dispatch route, which we are seeking in this case.

I should have said Exhibit No. 3.

(Exhibit No. 3, Witness Stickell, marked for identification.)

A. Exhibit No. 3 shows a reasonable route using Pittsburgh Dispatch or the New York Central-P. L. E.-Western Maryland route to Hagerstown, and out of Hagerstown via Western Maryland to York, Pa., or Baltimore, Md., to points on the Pennsylvania Railroad east of York, Pa., or Baltimore, Md., and to points lying between New York City and Cape Charles, Va. The distance via this route from Chicago to Salisbury, Md., is 934 miles. The distance via the Pennsylvania Railroad, is 1,041 miles.

Exam. Berry: By that route, you are seeking rates only to destinations on the Pennsylvania?

The Witness: Only on the Pennsylvania.

By Mr. Hillyer:

Q. Now, Exhibit No. 4, describe the Wabash route.

(Exhibit No. 4, Witness Stickell, marked for identification.)

[fol. 469] A. Exhibit 4 is a map showing the Wabash, Wheeling & Lake Erie, marked at the top. Exhibit 4 shows a reasonable route using Wabash-Wheeling & Lake Erie-Pittsburgh & West Virginia-Western Maryland Railroad to Hagerstown and out, as above. The distance via this route from Chicago to Salisbury is 943 miles. The distance via the Pennsylvania Railroad route is 1,041 miles.

I might state Salisbury is in the middle of the heaviest section we ship our feed to. That is the reason Salisbury is used. Any other section on the Eastern Shore would show the same difference in mileages.

Exam. Berry: Again, you are asking through routes and rates only to points on the Pennsylvania?

The Witness: Only to points on the Pennsylvania east of York and Baltimore, and between New York City and Cape Charles, Va.

By Mr. Hillyer:

Q. Now, describe Exhibit 5, please.

(Exhibit No. 5, Witness Stickell, marked for identification.)

A. Exhibit No. 5 shows mileages from Chicago, St. Louis, and Decatur, the last exhibit.

Exhibit No. 5 shows representative origins and representative destinations. It also shows distances over the present Pennsylvania route and over the two routes asked for.

It also shows the through rates on grain products. For [fol. 470] example, Chicago is an origin from which much of our raw material is obtained. Salisbury, Md., is a representative destination. The distance from Chicago to Salisbury, Md., is 934 miles via the Pittsburgh dispatch, 943 miles via the Wabash route, 1,041 miles via the Pennsylvania route.

The mileage is more favorable over either route requested than via Pennsylvania Railroad. It makes quicker time and the service is more efficient and economical, and will aid railroads in meeting truck competitive service.

Mr. Hillyer: Mr. Examiner, we offer Exhibits 1, 2, 3, 4, and 5 as part of the record in this case.

Exam. Berry: They will be accepted.

(Exhibits Nos. 1, 2, 3, 4, and 5, Witness Stickell, received in evidence.)

Mr. Hillyer: You may cross-examine this witness.

Mr. Craig: Mr. Examiner, before he starts cross-examination—

By Mr. Craig:

Q. Mr. Stickell, in your Exhibit No. 5, should not that be Decatur, Ill., instead of Decatur, Ind.?

A. No, sir. I specified that because we use quite a bit from Decatur, Ind. All the feed I get from Decatur, Ind., is not reshipped. I notice the other points are junction points and use reshipping rates.

Cross-examination.

By Mr. Eshelman:

Q. Mr. Stickell, what is the average weight, if you know, [fol. 471] of your inbound materials moving under grain rates? I, of course, do not mean coal. You say—

A. Rates?

Q. Weights. Weight in pounds or tons.

A. Do you mean per car or per year?

Q. No, I mean per car.

A. Well, I specified that. I will give you the same figures over again.

Q. That won't be necessary, because that is just what I wanted. I want to know the average weight of your inbound commodities. I think you gave weights for different commodities, didn't you?

A. No. I said that grain comes in to the marked capacity of the car.

Q. That is what I heard.

A. And feed, that means raw materials, feed averages 30 tons per car inbound.

Q. Have you ever made any computation to indicate what would be the average of all of your inbound receipts?

A. Well, I would say it averages 38 to 40 tons, because grain is our heaviest article that we use.

Q. Do you think it runs that heavy?

A. I figured that a couple of years ago.

Exam. Berry: You are now also including the various meals that are referred to, and the soy beans?

[fol. 472] The Witness: Yes.

Exam. Berry: And all those other articles.

By Mr. Eshelman:

Q. Have you made any computation of the average of your outbound products that go by rail?

A. Yes.

Q. About what average?

A. I show that as 23 tons per car. Now, that, of course, was figured on 1940; in 1941, the railroads are asking us to load heavier, and we are trying to oblige as much as we can get the customer to do so.

Q. About what was your total inbound tonnage, if you have that, for any representative period by rail and then by truck; separately, if you can give that.

A. Our tonnage for 1940 approximated 66,000 tons, of which probably 10 percent was trucked.

Q. And the balance rail?

A. Yes.

Q. And outbound, I do not believe Mr. Fulde gave the outbound tonnage; did he? In any event, can you state what it is?

A. The outbound tonnage, of course, is the same. Whatever moves in moves out. We try to average. If there is 10 percent moves in by truck we try to move 10 percent out by truck. If there is more than that of course we have to cancel tonnage.

Q. So that in your operation practically goes in goes out also: is that right? In other words, your local receipts [fol. 473] would just about be offset by your local disposition?

A. Yes, that is the—that is my job to keep that on a balance.

Q. Is some of your inbound tonnage non-transit?

A. Yes, sir; considerable of it. Milk, meat scrap, bone, meal.

Q. And how about your outbound tonnage, is some of that non-transit business, too?

A. Our outbound non-transit business is moved practically all by truck.

Q. And would that be true of most of the business that went to Elsmere Junction, or was that transit tonnage?

A. That was transit tonnage as far as Elsmere.

Q. By the way, is that a current practice, or was that one that was followed, or is that still being followed?

A. It is followed today.

Q. To as great an extent as indicated in your figures for the period indicated?

A. Yes, I would say it is running about the same. Now, this truck business has only been in operation about 2 years.

Exam. Berry: Is all the grain—that is, the buckwheat, corn, barley—you purchase in the Columbia Valley moved out by truck?

The Witness: The majority of it does.

Exam. Berry: Some of it does move by rail?

The Witness: It can move out by rail. We have rates, through rates, and it can be used, if we ship feed down into [fol. 474] Virginia, something like that, east, north-south, is a straight through movement. That does not enter into our case, but I am making that as an explanation.

Exam. Berry: No. I asked you that. That question is based on what Mr. Eshelman asked you, what is moving out by rail and truck.

The Witness: See, we are located on four railroads; that can be moved different ways.

By Mr. Eshelman:

Q. Is it your thought that if the routes were established which the complainant asks, you would have service to the destination territory on the P. R. R.?

A. It would naturally work itself out that way saving the back haul and two switching moves, which takes about four days.

Q. To what extent have the trucks, or, rather, the inbound materials which you receive at Hagerstown, to what extent, if you know, had they had a transit service in C. F. A. territory, or some point before they reach Hagerstown? In other words, would you say it would be half of your inbound tonnage?

A. Let me get that question straight. Do you mean feed and, say, corn that is raised in Iowa and stopped, say, at Decatur for transit?

Q. Yes.

A. And then moved on?

Q. Maybe it could be approximated by stating about what [fol. 475] proportion, roughly, of your inbound 66,000 tons would consist of the coarse grains as distinguished from feeds or brans, or something that has been partially through the mill.

A. I would not like to say. I never figured that up. It has never entered into—

Q. Do you think your tonnage of your inbound grains during that period, that would be matched by your 66,000 tons?

A. Do you mean the amount of grains?

Q. Yes.

A. We use more grain than we used mixed feed, by considerable percentage.

Q. It would be predominantly the grains, would it?

A. The grains, and the grains move originally from the country elevator point as much as possible.

Exam. Berry: From what elevators?

The Witness: Country elevators.

Exam. Berry: But not through the rate break points?

The Witness: Well, I might state at the present time the majority of our corn is coming from Iowa.

By Mr. Eshelman:

Q. Does it come through an elevator but still through a rate break point?

A. Through Chicago, of course.

Q. Through Chicago or St. Louis.

Exam. Berry: Well, the rate you would pay would be Chicago or St. Louis.

[fol. 476] The Witness: Well, the average rate is 43 to 46 cents from Iowa, which we pay.

Mr. Eshelman: I think both of you are right, Mr. Examiner; undoubtedly he pays the money, but the part that we are concerned with is the part east.

The Witness: Sure. It is a split rate.

By Mr. Eshelman:

Q. Yes.

What are the points in Central territory from which you receive most of your mill products. I think you named Decatur, Ind., as one. What do you receive from Decatur mostly?

A. Mostly soy bean meal.

Q. And what do you receive from Cleveland?

A. From Cleveland we get some bran middlings and linseed oil meal.

Q. Do you get anything of the sort from Indianapolis?

A. In the way of feeds, now, you are talking about?

Q. Yes.

A. Very little feeds. We get plenty of grain but very little feeds.

Q. Do you get anything that has been processed at all from Indianapolis? Isn't there some processors in Indianapolis from whom you buy materials?

A. Not that I remember of at the present time.

Mr. Hillyer: I think, Mr. Examiner, it would be well for [fol. 477] this witness right now, in view of these questions,

to clear up the difference between mill feed and mixed feed.

Will you do that, please?

A. Where I specify mill feeds coming into the plant, it means raw material such as bran, middlings, cottonseed, soy bean meal, linseed oil meal.

By Mr. Hillyer:

Q. Those are the raw materials.

A. Raw materials.

Q. For mixed feed?

A. For mixed feed.

By Mr. Eshelman:

Q. And those are properly denominated mill feed; is that right?

A. Well, mill feed naturally means bran and middlings.

Q. Then perhaps my question should have been, do you receive mill feeds from Indianapolis?

A. As far as I can remember, very, very little.

Q. Can you estimate the proportions of your inbound material that consist of whole grains as against either mill feeds or mixed feeds?

A. No, I think you asked me that question a while ago and I said it was largely a guess. I would say probably sixty or seventy percent is grain.

Q. On your Exhibit 5, your reference to the Pennsylvania Railroad mileages there I note include the back-haul. I take it that the same applies to the Pennsylvania Railroad [fol. 478] mileages which you used in your testimony in describing in Exhibits 2, 3, and 4; is that correct?

A. Wherever I used any mileages in connection with the Pennsylvania, I included the back haul of 146 miles.

Q. Yes. On your Exhibits 3 and 4 I note that the heading of each indicates that the routes to the Pennsylvania—that is to say, from the Western Maryland to the Pennsylvania is via Hagerstown although the maps themselves indicate that York and probably Fulton Junction are the ones on which the map was drawn. Which is correct there?

A. Well, I testify into Hagerstown on the Western Maryland and out on the Western Maryland, as far as York or Baltimore, which is Fulton Junction, then Pennsylvania.

Exam. Berry: Your heading is erroneous, then, on that?

The Witness: Well, that should mention, coming down to a fine point, it should mention to Hagerstown and out Western Maryland, Western Maryland-P. R. R.

By Mr. Eshelman:

Q. May I ask, did you consider in requesting routes whether you were seeking routes from the Western Maryland to the Pennsylvania via Hagerstown as the Junction?

A. No, I did not request that in any place.

Q. I meant, did you consider requesting it at all? I mean to say, did you consider it?

Mr. Hillyer: Will you state that question again, please, Mr. Eshelman?

[fol. 479] Mr. Eshelman: I say, in determining what routes you would ask for, did you give consideration at all to requesting a route via Hagerstown?

The Witness: You mean out over the Pennsylvania Railroad?

By Mr. Eshelman:

Q. Yes.

A. Well, that gets right into the out-of-route movement again. I am asking for the most direct movement.

Q. No, but I meant, suppose under your illustration—take Exhibit 3, for instance. The shipment into Hagerstown was over this Pittsburgh dispatch route, and then went out beyond Hagerstown via the Pennsylvania to Harrisburg, and so forth.

A. No, that was never considered. We asked for the most direct route, to save mileage and make quick time.

Q. And was the selection of York and Fulton Junction your own judgment as to the preference as among those possible routes if a route were to be established?

A. Well, I got what advice I could get, and I was advised that that was the quickest route.

Mr. Hillyer: That is, the advice you got was from whom,—the Western Maryland Railroad?

The Witness: I asked the Western Maryland Railroad and I asked other traffic people.

By Mr. Eshelman:

Q. And did some representative of that company indicate that the route to York and Fulton Junction would [fol. 480] be preferable to that company via those junctions?

A. Well, this route is really a continuation of the case 10 years ago, and it followed along the same lines.

Q. The thing I really wanted to get, your view or opinion about, or your own position, so far as you are concerned; if the Commission were to establish routes in response to this complaint, would you care whether those routes operated via Hagerstown or via York or via Fulton Junction, or any other junction, so far as the service—so far as that is concerned, as long as the resulting service was satisfactory. I mean to say from your standpoint, are you concerned that it should move through any particular junction other than the resulting service be good?

A. Well, in the first place, I would say if that was given to the Pennsylvania at Hagerstown you lose one day right off the reel.

Q. You would?

A. That is the standard practice there now because we are moving cars every day. You immediately lose one day switching from Western Maryland to Pennsylvania. That is one of the reasons it was asked the other way.

By Exam. Berry:

Q. Doesn't that switching have to take place at York, or the other place?

A. That is direct connection. It is under Western Maryland.

Exam. Berry: Isn't it a connection at Hagerstown?

[fol. 481] A. It is the switching connections in which a day is lost.

Exam. Berry: Why is a day lost one place and not the other; that is what I was trying to find out. To make the connection at either place you have got to switch, haven't you?

A. For instance, the Pittsburgh dispatch is a connection of three railroads but those trains run right straight through. The New York Central, Pittsburgh & Lake Erie, they move straight through. Now, that is a railroad

proposition, if they have sufficient traffic, go through Western Maryland to Baltimore, which I imagine they have, why there would be through trains move right through on Western Maryland to Baltimore and Pennsylvania.

Exam. Berry: Do you mean Western Maryland to York and Pennsylvania beyond?

[fol. 482] A. Western Maryland to York and Pennsylvania beyond. Now, that can be changed, if it is any help to the Commission.

Exam. Berry: Well, I do not still see why there would be a day lost, a day more required to move by the way of Harrisburg than York; that is what I was trying to find out.

The Witness: Well, of course, we are not moving anything by this requested route because we have no rates that way, so I do not know what the experience is, and I do know the experience the other way moving.

Exam. Berry: You do not know that you would gain a day by moving via York?

The Witness: That is what I was advised it would be.

Exam. Berry: Go ahead.

By Mr. Eshelman:

Q. Who controls the switching at York? That is to say, what line does the switching of your plant at Hagerstown?

A. The Western Maryland does all the switching because we are on the Western Maryland tracks. Of course, the Pennsylvania would push their cars over to the junction point, which I show on my map, South Junction.

Q. The switching then at York, which takes the extra day, is done at York?

Exam. Berry: At York or Hagerstown?

By Mr. Eshelman:

Q. I mean at Hagerstown.

A. At Hagerstown. Well my experience has been when [fol. 483] a car is loaded there in the morning it is on the junction at noon. It is on the junction, if it is loaded in the evening—I say the evening, they switch at 6 or 7 o'clock—it is on the junction before midnight, which is railroad practice.

Q. Do you have any routes at all from any part of Central

territory that enables you to reach the peninsula, or any part of the peninsula at the flat rate without back-haul charge?

A. We are unable to get there, only over the Pennsylvania, and showing the back-haul charge.

Q. You do not think you have any territory in Central territory from which you can draw that would reach any part of the peninsula without back-haul charge?

A. I never made any—the B. & O. at one time had some sort of a service, Baltimore and Ohio Railroad, out of Baltimore, in which they went over to a small point in the Eastern Shore, and traveled on some little railroad there which is owned by the Pennsylvania, but I tried to use that some years ago, but the bridge was washed out and it was discontinued.

Q. I had reference to the Pennsylvania. For instance, Wilmington down to Baltimore, and all that territory.

A. As far as I know, there is no way to get through there except with the back-haul.

Q. The Pennsylvania, I think you say you have transit via the Pennsylvania at Hagerstown when the back-haul charge is paid; that is correct, isn't it?

[fol. 484] A. Yes.

Q. And that was put in at the request of your company, was it not?

A. Yes, sir.

Q. And there is also absorption by the Pennsylvania of Western Maryland switching charges on that business; isn't that so?

A. There have been the last year, or probably a little more; before that we had to pay it.

Q. Can you reach—I think you mentioned the territory you could reach without out-of-route or back-haul charge, but I am not sure whether you named Lackawanna. Can you reach points on the Lackawanna?

A. No.

Q. On the Lehigh Valley?

A. No.

Q. On the Erie?

A. A few points on the Erie, and if you are getting down to fine points, I can reach a few points on the Pennsylvania north of Harrisburg, such as Watsontown.

Q. And Long Island?

A. Long Island I am not quite sure. I can look in the tariff, if you want to know. I think my normal route is

New York Central to go in there, but I am not quite positive. We are just opening up that route and haven't gone into it yet. The Pennsylvania go in there, I know.

[fol. 485] Q. Does your company not ship into the Carolinas at all?

A. No, sir.

Q. Do you know whether the grain which you transit or the mill feed which you transit, or to what extent that has more than one transit operation performed on it east of the rate-break point like Chicago, St. Louis, and so forth?

A. Well, I have noticed on some freight bills that there is some extra transit charges, but it does not interest me particularly, and I could not give you any figure, but I do not think it is so very heavy.

Mr. Eshelman: I think that is all I have.

By Mr. Cross:

Q. Mr. Stickell, you stated that all of your competitors could reach Eastern Shore-P.R.R. points at the flat rate. Is it a fact that the mill at Portsmouth, Va., represented by Mr. Craig, can reach those points at the flat rate?

A. Well, when I—the territory that we work in is practically, you might say, north of the Mason and Dixon Line. We are practically on it, and that is what we consider our competitors. Now, Norfolk, Va., is in southern territory. Because we do not get down there I really know very little about what is going on down there.

Q. You know he can't reach it at the flat rate, don't you?

A. Well, I have never gone into it; practically any mill in the South would not be able to get in there, but they have [fol. 486] their whole southern territory, and besides I would imagine the Allied Mills, being a large mill, a large concern, would have plenty of plants in the Central territory that could go there without using—

Q. That is not the question I asked you, and I understand the answer to my question is you do not know?

A. I do not know.

Q. Now, there are manufacturers of feeds at Baltimore, are there not?

A. Yes, sir. There is a mixing plant in Baltimore.

Q. Isn't there some plant called Steen?

A. I do not know the name of it. I know there is a plant there.

Q. Now, can that plant—do you know which railroad that plant is located on?

A. No, sir. I am not acquainted with them.

Q. If by chance that plant is located on the Baltimore & Ohio Railroad, would you say that it could reach the Eastern Shore at the flat rate?

A. If he was on the B. & O. he could not reach it.

Q. He could not. You don't know anything about Winchester, Va., do you?

A. So far as I know, there is no plant there. There used to be a flour mill there. I doubt very much whether it is there any more.

[fol. 487] Q. Now, these—so what you really mean as to your competitors reaching the Eastern Shore, P.R.R. points, is that such of your competitors in the East as are located on the Pennsylvania Railroad can reach these Eastern Shore P.R.R. points at the flat rate; is it not?

A. No. In Mr. Fulde's testimony he gave you quite a list of competitors and location points.

Q. Well, let us take your competitors in the East. Isn't it true as to your eastern competitors that only those located on the Pennsylvania Railroad can reach these Eastern Shore points at the flat rate?

A. Just what points do you have reference to? You probably have some in mind, and probably I could answer your question better.

Exam. Berry: Salisbury and similar points.

By Mr. Cross:

Q. The points that you have in mind which you want to reach.

Exam. Berry: On the Eastern Shore.

A. Well, you would have to be located on the Pennsylvania Railroad if you are east of Hagerstown to get on the Eastern Shore on the P.R.R.

Q. You have to be on the Pennsylvania Railroad in Eastern territory to get to the Eastern Shore at the flat rate, don't you?

A. Well, I am not acquainted. What is the Eastern territory, is Pittsburgh in Eastern territory?

Q. Yes. Pittsburgh is in Eastern territory.

A. Pittsburgh should be able to get there without any transit on most any rate.

Q. Have you a competitor at Pittsburgh?

A. I think there is a mixing plant there.

Q. I do not think he was listed by Mr. Fulde, was he?

Mr. Fulde: It is a small mill there.

Mr. Cross: And not a competitor.

By Mr. Cross:

Q. Now, these competitors in Eastern territory, such as at Lancaster, can't reach points which you can reach at the flat rate, can they?

A. Well, now, are you referring to Eshelman? Eshelman has a plant in Ohio that he can reach it.

Q. I am talking about the plant at Lancaster.

A. Lancaster is not on the Western Maryland Railroad. He can't reach it.

Q. Your competitor at Lancaster cannot reach the Western Maryland deliveries which you can reach at the flat rate; can he?

A. I will have to answer that question that I do not know, because I never checked it to those. He may have other rates from Buffalo, down the same way, like that, and be able to get in there. I am not an expert traffic man, to go in there. I am just a partial traffic man.

[fol. 489] Q. You don't know?

A. I will say I don't know.

Q. Now, is it not a fact that you also have transit to points on the Baltimore & Ohio Railroad at a back-haul charge?

A. Yes, we have that the same as we have the Pennsylvania.

Q. Now, this competitor of yours at Lancaster, has no similar arrangement, has he?

A. Any customer on the railroad, Pennsylvania Railroad, at Lancaster does not need any back haul charges.

Q. Your competitor at Lancaster cannot reach Baltimore & Ohio deliveries at the flat rate less a back haul charge; can he?

A. I don't know.

Exam. Berry: Are you asking for any joint rates to other routes on the Baltimore & Ohio?

The Witness: No, sir. Pennsylvania only.

Mr. Cross: That is certainly not our understanding of the complaint, Mr. Examiner.

Exam. Berry: I was judging by the evidence.

Mr. Cross: Yes, sir. We asked Mr. Hillyer in Chicago as to whether his complaint was limited to the Pennsylvania, and he said he could not so state, so naturally we are here protecting ourselves.

Exam. Berry: I was not criticizing you for being here. I just wanted to get it clear. I judged that was the case from the evidence, and now they say it is.

[fol. 490] Mr. Cross: Of course, we are going to ask for a finding by the Commission as to the Baltimore & Ohio deliveries that the existing routes to those points are adequate and proper.

Exam. Berry: Off the record.

(Discussion off the record.)

Exam. Berry: On the record.
Proceed.

By Mr. Cross:

Q. Mr. Stickell, have you any warehouse or distributing operation at a point on the Eastern Shore?

A. Yes. We have a small place at Salisbury, Md.

Q. Now, you gave some existing routes which you have under which you have transit. As I recall you did not mention the transit arrangement to points on the Baltimore & Ohio Railroad, did you, in that list?

A. No, sir. We mentioned B. & O. and its connections, Cherry Run, W. Va.

Q. You also have transit to Baltimore & Ohio deliveries and a back-haul charge, have you not?

A. Yes, we have that, but that is not in this case.

Q. Well, you were stating arrangements which you had. You gave a list of them, but I notice that you omitted quite a number, and that was one of the ones that you omitted.

Now, is it or is it not true that you also have transit at a back-haul charge to points on the Southern Railway in connection with the Baltimore & Ohio?

[fol. 491] A. Yes, I suppose that is still in effect. I used to use it, but I do not use it any more.

Q. I am only talking about the routes which you have transit to today, and you gave a list of them, and it seemed to me that you omitted a number of available routes.

Now, I am simply interrogating you as to the ones which I thought you omitted.

A. Well, that route is probably in effect, but I would not like to say being as I have not used it for probably eight years.

Q. Haven't you also transit in connection with the so-called Durban route; that is, Chesapeake & Ohio to Durban and thence Western Maryland to Hagerstown?

A. That is exactly the same route as the Wabash and its connections, but I did not think it was necessary to bring it in. It is complicating the case.

Q. But that is a route on which you have transit today?

A. It is the same thing as the Wabash and its connections except it would be the C. & O., Durban, Western Maryland.

Q. You also have a transit route in connection with the Norfolk & Western, haven't you?

Exam. Berry: For what purpose are you asking these questions now?

Mr. Cross: I am talking about his original inbound territory.

[fol. 492] Exam. Berry: Yes, and to what destinations?

Mr. Cross: I think the destinations are to points on the Reading, Western Maryland, Central Railroad of New Jersey, probably also on the Lehigh Valley, D. L. & W., and Erie and the New England lines.

The Witness: The Norfolk & Western is really part of the B. & O.-Durban route. I do not think you are able to move stuff, say, from Ohio the whole way to Hagerstown via N. & W., N. & W. and Chesapeake & Ohio seem to mix that up in some way. I do not use it.

By Mr. Cross:

Q. Isn't there a route known as the Blue Ridge dispatch made up of Norfolk & Western and its western connections to Hagerstown?

A. Which the C. & O. come in there?

Q. That is as one of the western connections of the Norfolk & Western.

Exam. Berry: Mr. Cross, what is the materiality of that in view of the fact now that they are only asking for deliveries on the Pennsylvania?

The Witness: That is the reason I kept it out of here.

Mr. Cross: I want to show that there are a very substantial group of through routes today.

Exam. Berry: Well, suppose he has. Would that be any justification for denying him Pennsylvania delivery?

Mr. Cross: He says that he is being cramped by the fact [fol. 493] that he has not these Pennsylvania deliveries.

Exam. Berry: As to the Pennsylvania deliveries, yes.

Mr. Cross: Yes.

Exam. Berry: Well, that is all we are concerned with.

Mr. Cross: Well, he listed his routes, which he did not—

Exam. Berry: The fact that he may have through routes to points on every other railroad in the country would not affect the question as to whether he also has a right to a through route to destinations on the Pennsylvania.

Mr. Cross: It certainly would effect whether he was being held down in his ability to market. I am willing to drop it as it is. I think he stated the routes I have in mind.

Exam. Berry: You may put it in, if you want to show those routes, and save a lot of time having him put it in. You may have one of your tariff men put it in tariff form if you think it advisable.

Mr. Cross: He has covered it.

Mr. Craig: Mr. Examiner, I would like to ask Mr. Stickell a question or two.

By Mr. Craig:

Q. Mr. Stickell, in your Exhibit No. 3, I gather from that that you are asking for through routes from Cape Charles, Va.; is that right?

A. Only as far as Cape Charles.

Q. Now, a few minutes ago in answer to a question of Mr. Cross you rather gave me the impression that you thought [fol. 494] Portsmouth, Va., was so far south that it could not get into this territory that you are trying to get into.

A. So far as I am personally concerned, it may not be very far from Cape Charles, but I just considered that in Southern territory.

Q. What is the distance Hagerstown to Cape Charles?

A. Do you mean around by the Pennsylvania?

Q. Yes.

A. I do not know. I would imagine on a guess, about 270 or 280 miles.

Q. What is the distance Portsmouth, Va., to Cape Charles?

A. I do not know.

Q. Would you say that there was any point on this Exhibit No. 3 as far as Dagsboro, Del., that the distance was greater from Norfolk or Portsmouth than it was from Hagerstown?

Exam. Berry: By rail, do you mean?

Mr. Craig: Yes, sir; by rail.

A. Rail and boat.

By Mr. Craig:

Q. By rail only.

A. By rail, that would be around through Hagerstown, or through—

Q. Yes, Hagerstown to Dagsboro, Del., Norfolk, Va., too, by ferry and the Pennsylvania Railroad to Dagsboro.

A. That is what I mean by boat. You say ferry, part of the railroad movement. I would say Portsmouth was [fol. 495] nearer than Hagerstown is.

Q. Would you agree with me, then, that perhaps Norfolk did have some rights to compete in this Eastern Shore territory with Hagerstown, seeing that the distance was much nearer than the Hagerstown distance was?

A. Well, we have to limit our case to something. Now, you take the whole Southeastern territory—

Exam. Berry: Can't you just answer that "yes" and let it go?

The Witness: All right, yes.

Exam. Berry: Certainly they got a right to compete in there just as much as you have, B. & O.-Pennsylvania destinations.

The Witness: Yes.

Exam. Berry: There is one question I want to ask you, Mr. Stickell, and that is you referred to four days' delay. Now, did you mean it took four days longer to reach the Eastern Shore by rail using the Pennsylvania today than it did trucks, or what four days longer than what?

The Witness: The four days is consumed in a day from Harrisburg to Hagerstown each way, that makes two days; and the day lost in switching each way, that is four days.

Exam. Berry: That is the four days you meant?

The Witness: That is the four days I meant.

Exam. Berry: Do you think you would save that four [fol. 496] days if you had this new route, or save two of them?

The Witness: Well, the average time in a car from Hagerstown via the Pennsylvania to the Eastern Shore is three to four days, depending whether it is the main line of the Pennsylvania or off move down through—they have a number of tracks; when a car leaves Hagerstown, Western

Maryland to Elsmere, that leaves Hagerstown late in the morning; leaves in the morning, it is at Elsmere the next morning. That is the actual movement.

Exam. Berry: What I am trying to get at is how much longer it takes today for a rail movement by the Pennsylvania, using the back haul, than it would take if you had the routes that you lost. I understood you to say it would be four days longer, and that is what I was trying to get straight. Now, you say it takes one day at Hagerstown and one day for the run, that would be two days instead of four, would it not?

The Witness: Two days each way, you see. See, it moves from Hagerstown, you were talking about Harrisburg. One day down, one day back, and one day switching movement, and two days the other way, so it is saving two days.

Exam. Berry: We will take a short recess, gentlemen.

(There was a short recess taken.)

Exam. Berry: Gentlemen, let us resume.

Mr. Eshelman: I have a few more questions, if I may be permitted to interrogate the witness.

[fol. 497] Exam. Berry: You may.

By Mr. Eshelman:

Q. I am just interested in this three or four days that you mentioned as being a time element that would affect use of the Hagerstown route, and I think that you said that one of the days would be consumed in the movement from Harrisburg to Hagerstown.

A. That is right.

Q. Now, that would be, of course, on the assumption that you were going to employ the P. R. R. transit to the P. R. R. route, in and out route; isn't that correct? That is to say, if the routes were established, such as the complaint asks for, and if they were established from the Western Maryland and P. R. R. and Hagerstown, then you would not have any inbound loss of one day coming down from Harrisburg; would you?

A. That is correct.

Q. And whatever the time element might be getting into Hagerstown under the present P. R. R. route, that would properly be compared with the time from the origin to Hagerstown via whatever routes you either now have or might be established; isn't that so?

I mean to say, that would be really your inbound movement, one inbound movement to be compared with another.

A. Yes, that is correct.

Q. Then, on your outbound, your proper comparison would be, I take it, the movement from Hagerstown to what [fol. 498] ever destination you are reaching, either by the present P. R. R. route, or whatever route might be established.

A. That is correct.

Q. Now, I take it, then, that your outbound movement would be two or three days from Hagerstown to destination on your outbound movement; isn't that correct?

A. Do you mean on the requested route?

Q. No, I mean to say by your P. R. R. route outbound.

A. The P. R. R. route outbound as a rule takes three to four days, mostly four days to destination.

Q. And did you include in that computation an inbound day coming down from Harrisburg—I mean excluding that?

A. No. The testimony, I meant in that line, takes three or four days to Harrisburg via Pennsylvania to Eastern Shore points.

Q. For outbound movement.

A. For outbound movement.

Q. For instance, what?

Exam. Berry: And the testimony, as I understood, is that one of those days is consumed in moving to Harrisburg from Hagerstown; is that correct?

The Witness: That is right.

By Mr. Eshelman:

Q. And you did not say, or have you obtained any information as to the length of time that it would take for either of the movements to destination, we will say to a similar [fol. 499] destination via either of the sought routes through York or Fulton Junction?

A. No, those routes are not in effect, so I could not say what they are.

Q. Well, do you have in mind any particular time that you have anticipated would be saved by such routes?

A. It should save two days.

Q. You think it would save two days?

A. I do.

Q. Save two days?

A. I do.

Q. Is that two days important from your standpoint?

A. The customers will often call us up in the evening and want their feed the next day.

Exam. Berry: But just one moment. That would only be one day, so far as the wants of the customers.

The Witness: I say, that is what they ask for. They want their feed as quickly as possible. For that reason we keep a small amount of feed at Salisbury, Md.

By Mr. Eshelman:

Q. Will you state why it would be so much more important—that is, if I can ask you to understand the customers' point of view, why would it be so much more important for him to say that day, or possibly two days, as you think it would be in that case, while it would not be important for him if several days elapsed while he would be getting [fol. 500] the grain from a more western market or mill, in C. F. A. territory or Kansas City, for instance?

A. Well—

Q. Do you think that is just human nature, do you?

A. Our—I can't think. Our experience with the customers in the Eastern Shore is they want very quick service. That is one of our reasons for putting the trucking service in that we already have.

Q. In connection with these outbound shipments, are you entitled to mix various commodities; for instance, an outbound car does not need to consist of all one thing, does it?

A. No. The transit tariffs allow you to mix anything in the grain product line.

Q. So that you could ship, for instance, mixed feed, bran, middlings, various things in that car; is that right?

A. If it is allowable in the tariff.

Q. And do you do that to some extent?

A. Very little.

Q. To some territories more than others, or how?

A. Well, I would say very little anywhere.

Q. But the right is there if you choose to do it?

A. Yes, the transfer tariff allows that.

Q. Do you receive any mill feeds or mixed feeds at your place at Salisbury other than from Hagerstown?

A. No, only from Hagerstown.

[fol. 501] Mr. Eshelman: I think that is all. Thank you.

Mr. Hillyer: That is all.

Exam. Berry: You may be excused.

(Witness excused.)

Exam. Berry: Call your first witness, Mr. Eshelman.

Mr. Eshelman: Our first witness left his exhibits at the hotel. I was wondering whether you think we could adjourn early and reconvene early, and then we would be ready to go.

Exam. Berry: Is that satisfactory to you, Mr. Hillyer?

Mr. Hillyer: On this question of adjournment, Mr. Examiner, I have a matter I would like to bring up at this time.

Mr. Eshelman: I did not mean an adjournment.

Exam. Berry: A recess.

Mr. Hillyer: I tried to accommodate the other side having this case postponed from time to time, and they finally got it set on a day that runs right into a case that I have coming up tomorrow before the Illinois Commerce Commission in Chicago. The argument starts there at 2 o'clock, and that case has been pending for several years, and I could not get it put off, and I am sincerely hoping that they are going to finish this case this afternoon so that I can get back there.

Exam. Berry: The question now is that we recess for the same length of time we would ordinarily, and resume.

Mr. Hillyer: But then I want to get that request in to you, too.

[fol. 502] Exam. Berry: We will try certainly to finish, and accommodate you in every way we can.

Mr. Eshelman: I might say I can confidently assert that we shall not be able to finish today. If you are willing to burn the midnight oil, and therefore let us go as far as we can today, and then whatever arrangement Mr. Hillyer and you wish to make, or you wish to make for his convenience, I think you will find us endeavoring to be cooperative.

Exam. Berry: How much time do you want for lunch?

Mr. Eshelman: Whatever you say. We can eat as fast as anybody. I would say not less than 1 o'clock.

Exam. Berry: We will recess now until 1 o'clock.

(Whereupon, at 12:20 o'clock p. m., a recess was taken until 1 o'clock p. m. of the same day.)

[fol. 503]

AFTERNOON SESSION

Exam. Berry: Gentlemen, we will resume.

Mr. Eshelman: Mr. Examiner, we expect to have three rate witnesses, and they will each tell a part of the story, and we will begin with Mr. Heimert.

E. W. HEIMERT, being first duly sworn, testified as follows:

Direct examination.

By Mr. Eshelman:

Q. Mr. Heimert, have you given your full name to the Reporter?

A. E. W. Heimert.

Q. And what is your connection with the Central Freight Association?

A. I am secretary of the Interstate Commerce Law Committee.

Q. And as such do you have charge of commerce work for the C. F. A. lines, which is handled by the Central Freight Association?

A. That is right, I do.

Q. How many years have you been engaged in traffic work?

A. Over 20 years.

Q. I think that will be enough. Twenty years is enough.

Exam. Berry: I guess they will waive the qualifications. Won't you?

Mr. Hillyer: Yes, sir.

By Mr. Eshelman:

[fol. 504] Q. Are you—just to shorten this up, are you chairman of the Defense Committee of the Central Freight Association defendant lines?

A. That is right, I am.

Q. Have you prepared exhibits which deal with this situation which is here involved, primarily from the standpoint of the origin territory, both Central territory and west, and particularly as to routes therefrom which are available to the East?

A. Yes, that is right. I have prepared something to this end and testimony to accompany them.

Q. Have you also prepared exhibits showing the points located in Central Freight Association territory from which grain and grain products may be drawn for transit at Hagerstown, Md., and then forwarded to eastern destinations?

A. I have, in the form of map exhibits. The first of these maps, which is Exhibit No. 6, shows the territory from which the grain may move for transit under the B. & O. Railroad tariff; the second when for transit under the P. R. R. tariff; and the third, when for transit under the Western Maryland tariff. The tariff references are shown on the maps.

Exam. Berry: Transit at Hagerstown?

The Witness: That is right.

(Exhibit No. 6, Witness Heimert, Marked for Identification.)

The Witness: The second map, or Exhibit No. 7, shows the origin territory from which grain may be shipped via [fol. 505] Hagerstown, Md., under the Pennsylvania Railroad tariff; and the third map, Exhibit No. 8, shows the origin territory from which grain may be shipped via Hagerstown, Md., under the Western Maryland tariff.

(Exhibits Nos. 7 and 8, Witness Heimert, Marked for Identification.)

By Mr. Eshelman:

Q. What do these three maps indicate in general?

A. They indicate that practically all of Central Freight Association territory is open for grain and grain products that may be shipped to Hagerstown for transit purposes.

Q. Is there any peculiar circumstance in connection with the grain rate structure which would cause the rates to have a much wider application than indicated by these three maps?

A. Yes. Through one-factor rates on grain and grain products are not in effect from Western Trunk Line territory, and the rates are constructed on a combination basis made up of the Western Trunk Line factor from the western origin point to the junction with the Central Freight Association road, or the "rate-break" point, as it is called,

plus the proportional or reshipping rates published by Agent Jones from the "rate-break" points to eastern destinations. The principal rate-break point on which the combinations are generally constructed are Chicago, Peoria, East St. Louis, and St. Louis. Since there are rates and routes applicable from the rate-break points, all of West-[fol. 506] ern Trunk Line territory is covered from an origin standpoint with rates and routes; the maps, however, do not portray this western territory but are confined to showing the extent of C.F.A. territory that is open. In other words, to get the situation from Western Trunk Line territory you just hook onto these routes that are shown from Chicago, Peoria, and St. Louis; that would give you variable routes from Western Trunk Line territory.

By Mr. Eshelman:

Q. Your map Exhibit No. 8 covered the origin territory in C.F.A. and beyond from which grain and grain products could be drawn for transit at Hagerstown, Md., under the Western Maryland Railway transit tariff. What destination territory is available when the transit is at Hagerstown on the Western Maryland on grain originating at points shown on that map exhibit?

A. There is a very extensive destination territory available to transit without out-of-route or back-haul charge under the Western Maryland tariff at Hagerstown, Md. This territory is portrayed in Exhibit No. 9, which is another map exhibit. Due to the limitations of the map, it was impossible to show the New England destination territory open to transit at Hagerstown without out-of-route or back-haul charge.

(Exhibit No. 9, Witness Heimert, Marked for Identification.)

Q. Take Trunk Line destination territory. Generally, [fol. 507] what territory is covered without out-of-route or back-haul charge at Hagerstown?

A. The lines of the Central Railroad of New Jersey, Reading Company, Delaware & Hudson, Long Island Railroad, S.I.R.T. Railway, P.R.S.L., L. & N. E. Railroad, and L & H Railway; the L. V. Railroad Wilkes-Barre territory and east; the D. L. & W. Railroad, Alford, Pa., and east; stations on the Erie Railroad and N.Y.O. & W. Railway

in the Scranton district, and the Western Maryland Railway east of Hagerstown, Md.

Q. You say the map does not permit showing the New England destination territory as to which transit is available at Hagerstown on the Western Maryland Railway. Please outline this destination territory.

A. Practically the entire lines of the Bangor & Aroostook Railroad, the Boston & Maine Railroad, the Maine Central Railroad, and the New York, New Haven & Hartford Railroad are open to transit at Hagerstown on the Western Maryland Railway without out-of-route or back-haul charge. To both Trunk Line and New England destination territories the route is that shown in Baltimore & Ohio I. C. C. A-4, to which the C. F. A. eastbound grain and grain products tariff refers. The route is via Baltimore & Ohio Railroad to Cherry Run, W. Va., Western Maryland Railway to Shippensburg, Pa., thence Reading Company and connections.

[fol. 508] Q. Have you anything further to say regarding the territory covered by this map?

A. Just that there is a rather large origin territory on the Pennsylvania Railroad in C. F. A. and a considerable destination territory on the Norfolk & Western Railway open to grain transit at Hagerstown, Md., without out-of-route or back-haul charge, as the route is Pennsylvania Railroad-Hagerstown, Md., Norfolk & Western Railway.

Q. Will this be covered in further detail a little later in your testimony?

A. The witness for the Pennsylvania Railroad will cover the details.

Q. Have you prepared a series of exhibits that would indicate the routes at present available to the transit operator at Hagerstown, Md., both with and without a back-haul charge, on grain from Central territory to eastern destinations?

A. Yes. Five exhibits have been prepared illustrating such typical routes between representative points. They do not show all of the available routes between the points shown, but they are prepared in sufficient detail to be truly representative of the prevailing situation.

Q. Please explain them in order.

A. Exhibit No. 10 is a statement of typical routes from Chicago, Ill., to New York, N. Y., via which transit is avail-

able at Hagerstown, Md., without back-haul or out-of-route [fol. 509] charge.

(Exhibit No. 10, Witness Heimert, marked for identification.)

The Witness: The companion exhibit, No. 11, shows typical routes from Chicago to New York City via which there is a back-haul charge.

(Exhibit No. 11, Witness Heimert, marked for identification.)

The Witness: It will be observed from Exhibit No. 10 that Central Railroad of New Jersey, D. L. & W., and L. V. Railroad deliveries are available at New York, N. Y., without back-haul or out-of-route charge when the transit is performed at Hagerstown, Md.

By Mr. Esbelman:

Q. You have shown Chicago, Ill., as a typical origin. Will you state why Chicago was used as typical?

A. Yes. These routes cover not only the local Chicago rates but also the proportional or reshipping rates. Grain from Western Trunk Line territory to Trunk Line destinations does not move on one-factor rates, but on combinations made on so-called "rate-break" points, of which Chicago is one and probably the most important. Thus, in addition to covering Chicago proper, these rates cover western origin territory. The same comment, except as to possible rank of importance, holds with reference to Peoria, Ill., and East St. Louis, Ill. Moreover, the rates from Chicago to New York are the base for the rate structure in the East.

Q. Proceed with your explanation of the exhibits.

A. Exhibits Nos. 12 and 13 cover routes from Decatur, Ill., to Freehold, N. J., No. 12 showing illustrative routes via which transit is available at Hagerstown without back-haul or out-of-route charge, and Exhibit No. 13 covering routes for Pennsylvania Railroad delivery for which there is a back-haul charge.

(Exhibits Nos. 12 and 13, Witness Heimert, Marked for Identification.)

Q. What is the particular significance of choosing Chicago and Decatur, Ill., as the typical origin points?

A. Chicago is the most important grain market in the country, especially as it pertains to wheat, corn, and other grains. Decatur, Ill., is the center of the soya bean industry and a very important point as to soya beans.

Exam. Berry: Is that Decatur, Ill., or Indiana?

The Witness: That is Illinois, Mr. Examiner.

By Mr. Eshelman:

Q. Will you proceed with your explanation.

A. The concluding exhibit of this series, No. 14, indicates the routes from Peoria, Ill., to Salisbury, Md., which are subject to out-of-route charges.

(Exhibit No. 14, Witness Heimert, Marked for Identification.)

Q. What conclusion do you draw from these exhibits?

[fol. 511] A. Generally speaking, the transit operator at Hagerstown has as many routes and as much destination territory open to him on C.F.A. and Western Trunk Line grain as any other grain transit operator located in the eastern portion of Trunk Line territory.

Q. Have you made any comparisons of existing routes at present available with additional routes which are sought for the purpose of establishing Hagerstown directly intermediate from western origins to eastern destinations?

A. Yes, Exhibit 15 sets forth this situation.

(Exhibit No. 15, Witness Heimert, Marked for Identification.)

Exam. Berry: Do you realize at the present time there are only two routes sought? Here you talk about typically sought routes.

Mr. Eshelman: From an origin end, these routes, the Pittsburgh dispatch route and the route through the Wabash are stated by the complaint to be typical.

Exam. Berry: Yes, but I am talking about now on the—

Mr. Eshelman: You are talking about destination.

Exam. Berry: Yes.

Mr. Eshelman: This is partly origin, too, but, of course, these were drawn in the light of his complaint and therefore we cannot recast these exhibits for the minute. We will have to put it in. Also I think they will bear on other issues [fol. 512] that we have here raised by the complaint.

Exam. Berry: Can't you disregard all other issues now except for the request for the establishment of these two routes, destination routes—that is routes of destination of the Pennsylvania?

Mr. Eshelman: Perhaps I do not make myself clear, Your Honor. I might say that the railroads regard this case as opening the door or seeking to establish a principle that will open the door, and we think the Commission is entitled to know if they do this what is the natural result or what will follow, and therefore we have to show the whole thing. We think the Commission is entitled to know.

Exam. Berry: I do not want, of course, to prevent you from putting in anything you want to put in material, but the case appears to me now—we have got a request for through routes and joint rates to points on the Pennsylvania Railroad only.

Mr. Eshelman: Yes, I so understand they are limited today.

Exam. Berry: Yes, and that those are the rates we are concerned with.

Mr. Eshelman: But the origin territory is not limited yet.

Exam. Berry: The origin territory, no, but I do not see the materiality of whether they have through rates with transit to all other points on every other route in the East [fol. 513] except the Pennsylvania.

Mr. Eshelman: I might say, Mr. Examiner, so that you might see the way our minds are working on that, and what we have in mind—we are prepared to show that the situation of which this complainant complains is the general situation, not an unusual situation, but the general situation in the East, that he is asking here for special treatment, for a special consideration. He is asking the Commission here for a type of relief which, if granted, we wonder how the Commission could refuse to extend the same type of relief to others. Now, in order to lay the background for that we have to show what he has, what the other fellows have.

Exam. Berry: All right.

By Mr. Eshelman:

Q. Will you continue.

A. Exhibit No. 15 sets forth this situation. It consists of three classes of routes; two present and one sought

between the typical origins and destinations shown at the extreme left of the exhibit.

Mr. Eshelman: I might say, however, in deference to the Examiner's statement, and also the action of the complainant, that wherever in our testimony that we refer to a sought route as something as to which he has withdrawn, of course we want you to understand that we are not trying to tell him by our testimony what he is asking. It is merely that it happened to be written that way, and I think it can be said [fol. 414] faster, and just so it is understood.

Mr. Cross: It is a route based on the same theory.

Mr. Eshelman: Well, that may be, but I mean to say, in saying that we are not to be understood as changing the situation from what you have indicated.

A. Column A depicts direct routes between origin and destination. Column B shows existing routes via which Hagerstown is intermediate and no out-of-route or back-haul charge is involved. The routes shown in columns A and B are present effective tariff routes. Column C shows similar information for routes which are not effective but are of the nature sought by the complainant to establish Hagerstown directly intermediate.

Q. Are the Column C instances you have analyzed representative of those sought by the instant complaint?

A. In my opinion they are. The examples shown under column C are representative of what is sought because they comprise carriers named parties defendant to the instant complaint and include routes consisting of the carriers and junctions cited in the complaint as typical.

Mr. Hillyer: Are you talking about one of your exhibits now?

The Witness: Exhibit 15.

Mr. Hillyer: Which page?

Mr. Eshelman: I think he had not referred to either page [fol. 515] in particular.

Mr. Hillyer: Is it Exhibit 15?

Mr. Eshelman: Yes, that is right.

A. Column C, we are talking particularly about column C, Mr. Hillyer.

By Mr. Eshelman:

Q. Do you have an exhibit portraying the situation with respect to destinations on the Eastern Shore or Del-Mar-

Va Peninsula similar in form to that covering grain transit at Hagerstown ex C. F. A. when destined Chester, Pa., Freehold, N. J., New York, N. Y., etc.?

A. Yes. Exhibit No. 16.

(Exhibit No. 16, Witness Heimert, marked for identification.)

The Witness: The destinations covered are Dover, Del., Georgetown, Del., Cambridge, Md., Salisbury, Md., Franklin City, Va., and Cape Charles, Va.

Q. Are these destinations representative of the peninsula situation?

A. They are. They are located in different parts of the peninsula stretching from Dover on the north to Cape Charles on the south. Cambridge, Md., is on the Chesapeake Bay and Franklin City, Va., is on the Atlantic Ocean. The destinations shown represent a complete covering of the peninsula from a geographical standpoint.

Q. Are these six peninsula destinations important points? [fol. 516] **A. Yes.** They are among the most populous towns on the peninsula and are all thriving centers of agricultural districts.

The next series of exhibits which I have prepared, commencing with Exhibit No. 17, are sketch map exhibits with explanations set forth on the exhibit itself.

These exhibits run 17, 18, 19, 20, 21, and 22, and I think if I explain one that will cover all of them.

Taking the first one. He have Chicago, Ill., to Dover, Del. We show first the Pennsylvania Railroad haul, 847 miles. Then we show the typical route via—that would have to be shipped in order to put Hagerstown in as a transit point without back-haul, and on that we show the amount of the haul which the Pennsylvania Railroad would get under such an arrangement. In other words, under the normal route haul the Pennsylvania Railroad handles it for 847 miles. Under the sought route the Pennsylvania Railroad gets a 100-mile haul. Out of the normal route there would be no interchange with other railroads. Under the sought route you have interchanges at—two interchanges, and the sought interchanges to additional intermediate lines, namely, the Western Maryland and the C. & O. The total mileage via sought route, 1,196, or 200 miles greater than the normal route.

(Exhibits Nos. 17, 18, 19, 20, 21, and 22, Witness Heimert, marked for Identification.)

The Witness: Now, that explanation I believe will suffice [fol. 517] to show the other exhibits.

There are different origin points, different destination points, but they are all substantially along the same lines, and they portray the situation with respect to typical points of origin in Central territory, typical points of destination on the Pennsylvania Railroad.

By Mr. Eshelman:

Q. And they are made up, are they, of lines named as defendants?

A. Yes, sir. They are. They show what would occur if what was sought herein would be granted.

Q. Now, will you explain your next exhibit, which will be No. 23.

(Exhibit No. 23, Witness Heimert, marked for identification.)

A. Exhibit No. 23. This shows the reshipping rate on grain from Chicago to New York and other North Atlantic ports since 1910, comparing such rates with first and sixth class rates.

The purpose of this exhibit is to show what I believe is common knowledge, namely, that the rates on grain and grain products and by-products in Official territory are among the lowest rates they have. They have not been increased in the same measure as the class rates generally, and the class rates in Official territory are a very important basis for the rates on a great number of commodities.

Exam. Berry: How do they compare with the rates from [fol. 518] Western territory?

The Witness: I have not made a recent comparison, Your Honor. They are very low, that is about all that I can say about that.

By Exam. Berry:

Q. Are they low compared to the western territory rates?

A. In the Western territory you have got a little different situation. There the Commission, 17000, Part 7, saw fit to establish a scheme of proportional rates, say, from Omaha to Chicago, Kansas City, St. Louis.

Q. You have the same rate-break principle there that you have at Chicago and St. Louis?

A. Yes, but our rates, however, from Chicago to the East are through with the use of transit. In the Western territory you do not have these through rates, but you have a series of proportional factors. Of course, if you compare a rate from Kansas City to St. Louis, mile for mile, with a rate in our territory the western rate may be lower, but if you compare the through charge from the country station to the destination I think the situation would be about the same as in our territory, although I will have to admit I have not made a recent check of that.

This exhibit shows that the reshipping grain rate from Chicago to New York, which is the basis for the rate not only to North Atlantic ports but to interior destinations, has [fol. 519] increased 62½ percent over the rate which was in effect in 1910. The first class rates in that period were increased 122.7 percent, and the sixth class rate 84 percent. The situation through Philadelphia to Baltimore is quite parallel with that from Chicago to New York.

Q. Have you any other exhibits?

A. Exhibit No. 24 is a statement showing what happened to the other classes since 1914, or before the series of horizontal rate increases took place in Official territory, and that indicates that the increase, comparing the increases shown in Exhibit 24 with the increase on grain in Exhibit 23, it shows clearly that the increase on grain was substantially less than on any of the first six classes in Official territory.

(Exhibit No. 24, Witness Heimert, for identification.)

The Witness: Exhibit No. 25 compares the increase on grain as developed in Exhibit No. 23 with the increases which have been made since 1914, or prior to the 5 percent advance, on a number of other important commodities which move in volume within Official territory. It will be noted that the increase on grain is the smallest of any of these commodities, compares with an increase of 108 percent on iron and steel articles, 110 percent on salted meats, and so on.

(Exhibit No. 25, Witness Heimert, marked for identification.)

[fol. 520] Mr. Eshelman: I think that is self-explanatory.

The Witness: Yes, sir.

By Mr. Eshelman:

Q. Does that conclude your exhibits?

A. That concludes my exhibits and the supplemental statement in connection therewith.

Mr. Eshelman: Mr. Examiner, from this point we proceed by another witness, so that is all I have with this one.

Exam. Berry: Off the record.

(Discussion off the record.)

Exam. Berry: On the record.

Mr. Eshelman: I am just going to ask one question:

By Mr. Esherman:

Q. If you know, Mr. Heimert, whether the measures of the rates, Chicago to New York, have at all been affected by water competition in the past, or has water competition, do you know whether that has ever affected reductions for the failure to make greater increases?

A. Oh, yes. I think that a case in point is the voluntary reduction of $5\frac{1}{2}$ cents which we made. That was clearly due to water competition.

By Mr. Cross:

Q. That is the grain rate?

A. Yes, sir; on the grain rate, Mr. Cross.

Mr. Eshelman: Thank you. That is all I have.

Exam. Berry: Are the rates in Official territory based upon a distance scale?

The Witness: The grain rate?

[fol. 521] Exam. Berry: Yes.

The Witness: No.

Exam. Berry: They are not?

The Witness: No.

By Mr. Eshelman:

Q. Do they more nearly approximate the old Graham formula; that is to say, with perhaps a great many variations they nevertheless rely on the Chicago-New York rate as the base?

A. Yes. Your eastbound grain rates are made on the grouping principle, while your groups were not coincident

with the class grouping as a Graham formula; they follow the general pattern of that adjustment.

Mr. Eshelman: Mr. Examiner, I would like to offer those exhibits in evidence. Those are Exhibits Nos. 6 to 25, both inclusive.

Exam. Berry: They will be accepted.

(Exhibits Nos. 6 to 25, inclusive, Witness Heimert, received in evidence.)

Exam. Berry: Is there any cross-examination?

Mr. Hillyer: There are no questions from me, representing the complainant. Make a note of that.

Exam. Berry. You are excused.

(Witness excused.)

Exam. Berry: Call your next witness.

Mr. Cross: I will call Mr. Beggs.

[fol. 522] R. J. BEGGS, being first duly sworn, testified as follows:

Mr. Cross: Mr. Examiner, Mr. Beggs' testimony, as Mr. Eshelman indicated, will deal with the theory on which complainant's case is based and the practical operation of that theory.

Exam. Berry: What is that theory?

Mr. Eshelman: We hope to explain that in the course of our case.

Exam. Berry: As I understand, the theory of the case—maybe I am wrong—as I understand the theory of the case, he says he is entitled to reasonably through rates and joint routes to destinations on the Pennsylvania Railroad.

Mr. Cross: So that he can have transit.

Exam. Berry: With transit, yes, and he has transit at the present time but does not have the through routes and rates to those points but he has it to other points.

Mr. Cross: We understand the justification advanced for his through rate is that he wants transit, and we will show that transit is an incident of through rates and not a basis for their establishment.

Direct examination.

By Mr. Cross:

Q. Will you state your name.

A. R. J. Beggs.

Q. Mr. Beggs, what is your position with the Baltimore & Ohio Railway?

[fol. 523] A. My position is assistant to freight traffic manager at Baltimore, Md.

Q. Will you briefly describe the principles upon which transit has been granted.

A. The general principle under which transit is granted is to give a transit operator located at some intermediate point the benefit of the same rates, rules and regulations as received by a shipper of like commodities situated in the origin territory or at the point of origin of the raw material and shipping his product to the same destination territory. However, it is not the purpose or the principle under which transit is accorded to give a transit operator greater service than given to the direct shipper. In other words, if a transit point is so situated as to require an out-of-route haul or a back haul a reasonable charge is made for that service over and above the charge paid by the direct shipper from and to the same points and over the same route.

Pursuant to these principles, the transit tariffs of the Baltimore and Ohio, for example, require that the milling point must be located at a point on the direct line from origin to destination if that point is to enjoy the most favorable charge for the stop-off and milling privilege. When the geographical location is such as to involve an out-of-route or back haul, it is the practice to make an extra charge for [fol. 524] the service of handling to and from a point on the direct line. Thus, Hagerstown, Md., on the B. & O., is located on a branch line extending from Weverton, Md., 23.8 miles and, therefore, additional charge over that which would apply if the mill were located at Weverton is made.

Exhibit 26 is an excerpt of pertinent items of B. & O. Railroad tariff, I. C. C. 23273, rules governing milling, mixing, malting and storage in transit of grain and grain products at Hagerstown, Md., and other points.

(Exhibit No. 26, Witness Beggs, marked for identification.)

The Witness: The first reproduced item is from page 15 of the tariff and sets forth the general provisions under which transit applies at points located directly intermediate to final destination upon established routes over which the through rates apply. The transit charge at such points on the direct line is one-half cent per 100 pounds. Where mills located at points off the direct line are given the opportunity to engage in transit practices, it has been customary to make an extra charge for the additional service. Hagerstown, Md., on the B. & O. Railroad is so situated.

Items 185 to 445 indicate that the charge at Hagerstown, when shipments are destined to B. & O. Railroad points east of Hagerstown to New York City, inclusive, and to points on connecting railroads, such as R. E. & P., Southern [fol. 525] Railway, M. & P. Railroad and W. & O. D. is 3¼ cents per 100 pounds, which is added to the rate from point of origin to destination.

At this point attention is directed to Rule 20, page 31, on the exhibit which states a very important prerequisite to the granting of transit privilege on grain and grain products at any point on the Baltimore and Ohio-Eastern Lines. Under that rule, transit at points east of the western termini, meaning Pittsburgh, Pa., and Wheeling, W. Va., is only allowed when the inbound commodities originate at points on the termini and west thereof, and when from connecting lines only when delivered to our road at points west of the termini. The reason for this requirement is plain and lies in the fact that the granting of a transit privilege entails out-of-pocket expenses greater than the nominal charge of one-half cent per 100 pounds charged at points on the direct line. To partially compensate for the expense the railroad naturally must receive a reasonably long road haul on the inbound commodity. The reduction of such routes by short hauling necessarily reduces the revenue out of which this expense is met and to that extent makes the accordance of the privilege less economically justifiable.

Exam. Berry: Isn't that rather argument for your brief than testimony from this witness?

Mr. Eshelman: These are questions of fact we want in [fol. 526] there, Mr. Examiner.

Exam. Berry: He is telling us what we ought to do and what is advisable.

Mr. Eshelman: Well, as to that, of course, you understand I was not talking about that.

Exam. Berry: Go ahead.

By Mr. Cross:

Q. What is your next exhibit?

Exam. Berry: So far as your rules are concerned, we have got them right here before us.

Mr. Eshelman: Yes, but—well, I think we can understand that that is the witness' opinion, not attempting to supersede the Commission's jurisdiction on making its conclusion.

A. On Exhibit 27, which is an excerpt of certain items from B. & O. Railroad I. C. C. 23273 covering transit privilege on grain and grain products at Winchester, Va. This point is located on a branch line extending south from Harpers Ferry, W. Va., distance 31.7 miles. When the product is returned north and east via Harpers Ferry the transit charge is 3½ cents per 100 pounds, the same as applied at Hagerstown.

(Exhibit No. 27, Witness Beggs, Marked for Identification.)

Exam. Berry: You understand that the complainant here is not contending that you are not justified in charging, making a charge for an additional line-haul. He is not making any such contention as that.

[fol. 527] Mr. Cross: No, sir; but we are showing that he is situated precisely similarly to these various other operators.

Exam. Berry: He is asking now for transit on a through route on one which is directly intermediate.

Mr. Cross: Yes, for the purpose of securing transit.

Exam. Berry: He has already got the transit now. He wants the through route.

Mr. Cross: No, sir; he has not got the transit, has he?

Exam. Berry: He has transit on both.

Mr. Cross: Except—

Exam. Berry: On out-of-line haul. Now he is asking to have out-of-line haul eliminated by the prescription of another route, and leave the transit charge identically as it is today. He is not asking for any change in it.

Mr. Cross: Well, he in effect is, Mr. Examiner, because he is asking for transit to points which today he has to pay the out-of-route haul.

Mr. Hillyer: No, you got that wrong.

Exam. Berry: The question is whether he is entitled to have a through route prescribed to points on the Pennsylvania Railroad at the joint rate, and he has transit today at a point which would be directly intermediate on the routes that he is asking for, and he is not asking for any change in transit privilege, one way or the other, as I understand it.

Mr. Eshelman: Mr. Examiner, if you permit me to inter-[fol. 528] jeet I think maybe counsel and yourself are not together. A good many of these traffic men talk about transit, meaning as to whether it is available. Now, it is true that there is a transit privilege or transit arrangement, but at the same time it is not available under the tariff today except in certain cases.

Exam. Berry: That is right.

Mr. Eshelman: So I think counsel, when he says that there is not transit there by these routes, means that complainant wants an arrangement whereby he can transit on such a route which he cannot today. It may be true, as you indicate at the present time the reason he cannot do it is for lack of route, but it is also true what counsel indicates what he is asking is opportunity to—

Exam. Berry: No. What he is asking is—what he is asking is a through route to make it directly intermediate.

Mr. Eshelman: I won't argue with you. I think it comes to the same thing.

Exam. Berry: So as to wipe out the back-haul charge. Isn't that what you are asking for?

Mr. Hillyer: That is it.

Mr. Eshelman: I think we understand one another.

Exam. Berry: All right. Go ahead.

Mr. Cross: I think his testimony will show.

By Mr. Cross:

Q. What is your next exhibit?

[fol. 529] A. Exhibit No. 28 is an excerpt from B. & O. L. C. C. 23403 covering transit privilege on lumber and forest products at points on the B. & O. Railroad. The practice here when the mill is so situated as to require an out-of-route or back haul is to make extra charge over that appli-

cable when the mill is located on the direct line between origin and destination.

(Exhibit No. 28, Witness Beggs, marked for identification.)

Q. You have now dealt with the Baltimore and Ohio tariff provisions with respect to transit and the general practice of applying a charge to compensate for out-of-route service. In your testimony you mentioned that transit is only available upon established routes from initial point of shipment to final destination. Would you state whether such routes are established for the purpose of according transit or whether transit is simply an incident of the routes? In other words, which is the dog and which is the tail?

A. I have never known of a route being established for the purpose of according transit at some point upon it. Most decidedly transit is simply an incident of existing routes and in this respect is precisely similar to other arrangements granted by railroads for effecting the stopping in transit short of final destination of the product. I have in mind diversion and reconsignment arrangements and stop-off for partial loading or unloading of carload freight. [fol. 530] Indeed, the reasons for recognizing that a party's wish for transit is no justification for the establishment of a through route are even more compelling than the reasons for recognizing that a party's wish for reconsignment or stop-off is no justification for the establishment of a through route.

Exam. Berry: Aren't we getting into argument now?

Mr. Cross: No, sir. These are two analogies.

Exam. Berry: A witness is supposed to testify to facts, and if this witness is giving us any facts I cannot recognize them. That is, just now it is purely argument.

Mr. Cross: He is stating for what purpose stop-off and reconsignment are established, that they are also incidental to through routes, that a through route is not established—

Exam. Berry: You know the Commission has some information and knowledge as to the transit business.

Mr. Cross: These are two analogies, Mr. Examiner, which I think are precisely the same.

Exam. Berry: All right. It seems to me we are going very far afield.

Mr. Cross: You understand, Mr. Examiner, when we received this complaint for defense it had tremendous scope, covered all of the East, and all of New England.

Exam. Berry: Can't you trim your defense now to the case made on direct?

Mr. Cross: No, sir; not without revising our entire testimony [fol. 531] money.

Exam. Berry: Well, why not revise it?

Mr. Cross: But this runs as much to the two sought routes as it did to the routes covering the whole destination territory.

Exam. Berry: Go ahead.

The Witness: For milling in transit is the most liberal of these arrangements.

To give some idea of the liberality of the arrangements under which transit is accomplished, I would point out that the carrier places the car on private siding for unloading, allows period of 12 months within which the inbound commodity may be converted or prepared for reshipment, and then furnishes one or more cars for reforwarding of the outbound commodity. For all of this service a charge of one-half cent per 100 pounds is charged in excess of the through rate from point of origin to final destination, when the mill is located at a point on the direct route. Compare this charge with the charge of \$6.93 per car for diversion or reconsignment. The matter of free time allowed under transit is another element of importance.

Exam. Berry: Are we concerned with that here? Doesn't that same situation exist at every transit point?

Mr. Cross: Yes, sir; but the through routes through those transit points were not established for the purpose of [fol. 532] affording transit.

Mr. Craig: Mr. Examiner, I would like to ask Mr. Cross if he thinks there is any question here of the reasonableness of the transit rules.

Mr. Cross: No, they are not in issue.

Mr. Craig: Then, what is the purpose of this?

Mr. Cross: I thought I would try to explain, Mr. Examiner, as we understand the complaint the complainant is asking for the establishment of through routes on which he would then secure transit, and the purpose for which the basis for his request for the establishment of the through route is that he wants the transit privilege.

Exam. Berry: Yes.

Mr. Cross: Now we are showing that that is making the tail wag the dog; that stop-off is not used as a foundation for the establishment of through routes; that reconsignment is not a foundation for that.

Exam. Berry: Well, isn't that all argument?

Mr. Cross: No, sir; I don't think so.

Exam. Berry: Where do your facts come in?

Mr. Cross: Because those are analogous.

Exam. Berry: Isn't it a question for the Commission to determine whether they are justified in prescribing the through routes?

Mr. Cross: Certainly, that is true, but I think that the [fol. 533] basis upon which the request is based is also important, ~~or~~ they ask—because of their being necessary to afford adequate transportation.

Exam. Berry: But you are not showing anything in regard to that. You are telling us what the cost of transit and privileges at other places which are identical are.

Mr. Cross: We are coming to that.

Exam. Berry: Go ahead.

Mr. Craig: He is going further than that. He is telling how liberal the B. & O. is in their transit rules, which, as I see it, has no part in this proceeding at all. There is no question about whether the rules are liberal or not, or whether legal or lawful here.

Mr. Cross: I am afraid Mr. Craig has misunderstood it. We have used simply the B. & O. tariffs as being representative of transit charges in this territory.

Mr. Craig: And your witness just said to show the liberality of the rule. He used that word.

Mr. Cross: That is exactly right, and he is now showing it. He is showing what service is performed under transit as against stop-off and reconsignment.

Mr. Hillyer: Mr. Examiner, I think that everything that has been offered here so far is open to the objection that it is irrelevant to the issues raised by this complaint. I have purposely sat here and have not objected to any of it [fol. 534] because I do not think it hurt our case any. I do not think it does it any good, but I was afraid of getting into an altercation here by objecting to it, by prolonging the thing; but I do not want the record to think that I am sitting idly by here and not knowing what is going on.

I would like to have the record show that complainant

contends that all the testimony of this witness and the previous witness is irrelevant to the issues raised in our complaint.

Exam. Berry: The Examiner is inclined to agree with you to a very large extent, a very large part of it is irrelevant.

Mr. Eshelman: I hope you will reserve your ruling until we get the case in.

Exam. Berry: I do not want, because that is my view, to preclude the defendants from putting in their case.

Mr. Hillyer: Yes, that is the way I feel.

Mr. Cross: I think you will appreciate, Mr. Examiner, we have been put in this position by the fact that we did not know until today to what extent this very general complaint was going to be limited.

Exam. Berry: I realize that.

Mr. Eshelman: He is letting you put it in anyway.

Mr. Cross: But I want him to understand our reasons for having a rather broad defense.

The Witness: On transit shipments when the car is first placed at the mill 48 hours free time is allowed and again [fol. 535] when the reshipment is made in one or more cars another period of 48 hours free time is allowed. Under diversion or reconsignment rules when a car is entitled to the privilege at the through rate from point of origin to destination the period of free time at the diversion point is 24 hours.

Rules and charges covering diversion or reconsignment of merchandise carload freight are published in B. & O. Railroad tariff I. C. C. 23409. Might say that these rules are the same on all the eastern railroads and are the outcome of investigation by the Interstate Commerce Commission in I. and S. Docket No. 1050, recorded at 47 I. C. C. 590.

These rules permit diversion and reconsignment only when no back haul is involved, except when carriers for competitive reasons meet direct line operations of other lines and such exceptions are specifically provided for. The diversion rules require that where back hauls are involved combination rates will be applied. Thus, at Hagerstown, B. & O. Railroad, no diversion or reconsignment can be made except at combination rates when Hagerstown is not directly intermediate to the new destination.

Under these rules if a car has been placed for unloading on private siding at billed destination and is forwarded therefrom without being unloaded to a point outside of the switching limits, it will be subject to the published tariff rates applicable on a shipment terminating at and of a ship- [fol. 536] ment originating at the point of diversion or reconsignment.

There is another tariff covering the diversion or reconsignment of fresh fruits and vegetables, which is more liberal than that applying to merchandise or dead freight. These rules on fruits and vegetables permit reconsignment after cars are placed at points of destinations on either public or private sidings, and if the reforwarding involves a back haul a scale of rates is provided in addition to the regular reconsignment charge of \$6.93 per car after placement at first destination. This back-haul charge for distances 60 miles and over 30 miles at points in eastern territory is 4½ cents. This compares with the milling in transit charge at Hagerstown of 3¼ cents for back haul of 47.6 miles. It will thus be observed that the reconsignment arrangement on fruits and vegetables follows the established routes and is, therefore, incidental thereto.

The other arrangement that I referred to as being in the category with milling in transit is the stop-off privilege for partial loading or unloading of carload freight. These rules are applicable to many articles of dead freight including most manufactured articles shipped in packages.

My next exhibit, No. 29, is an excerpt from B. & O. Railroad tariff I. C. C. 23391, and shows several of the rules that govern generally and also the rule which permits stop-off of cars at Hagerstown, Md., on the B. & O. Railroad.

[fol. 537] (Exhibit No. 29, Witness Beggs, marked for identification.)

The Witness: This arrangement, like milling in transit and diversion or reconsignment, is predicated on the stop-off point being located directly intermediate on the route from original point of shipment to final destination, with some exceptions due to competitive reasons. However, there is a substantial difference in the amount of service performed on stop-off cars as compared with milling in transit. On stop-offs the rate applicable from the original point of shipment to the final destination is charged on the

entire weight of the shipment, although the actual weight beyond the stop-off point of necessity is less and often 50 percent or less than the weight on which charges are collected through to final destination. Under milling in transit there is only a small shrinkage which is not reforwarded at the balance of the through rate to final destination. Attention is directed to the fact that the stop-off arrangement, like diversion or reconsignment and milling in transit, is a privilege granted by the carriers for the accommodation of shippers, and necessarily is incident to transportation under established through rates and routes. The charge for stop-off is the same as for reconsignment after placement of \$6.93 per car, except where additional service is required as at Hagerstown. Thus the charge at that point is \$11 per car in addition to the regular charge of \$6.93. [fol. 538] Q. Is this stop-off arrangement used at Hagerstown?

A. Yes, it is actively used and I have not heard any request that it be by-passed through the establishment of new routes. I cannot emphasize too strongly that the stop-off privilege like transit is wholly incidental to established routes and that the desire to accord such privileges or to have existing privileges modified does not constitute a basis for the establishment of new routes.

Q. I will now call your attention to the fact that section 15 of the Act was amended by the Transportation Act of 1940 to provide to the general effect that the Commission shall not require any carrier to embrace in a through route substantially less than the entire length of its railroad which lies between termini of a proposed through route unless the Commission finds that the through route proposed to be established is needed in order to provide adequate and more efficient or more economical transportation. Will you now deal with this feature?

A. My testimony will now show affirmatively that the existing through routes from representative origins to representative destinations on the B. & O. Railroad are adequate and at least as efficient and economical as routes from such origins to such destinations via Western Maryland Railway and Hagerstown.

My next exhibit, No. 30, is a statement showing typical routes on grain and grain products from Chicago, Ill., to destinations on the B. & O. Railroad, of which University,

[fol. 539] D. C., Aberdeen, Md., and Sykesville, Md., are representative.

(Exhibit No. 30, Witness Beggs, marked for identification.)

Exam. Berry: Can't you eliminate that exhibit? He is not asking for anything on the B. & O. You are just showing how efficient your present routes of the B. & O. are, and what other routes may be on the B. & O.

Mr. Cross: This is leading up, Mr. Examiner, to showing the operation of the theory on which his case is based. I think we can eliminate the description that goes with the exhibit.

Exam. Berry: I understood you to ask this witness here, and I understood him to say that his testimony was going to the question as to whether the present routes were adequate, economical, and efficient, and that the other routes would not be any more so to destinations on the Baltimore and Ohio.

Mr. Cross: Of course, that issue has now been eliminated from the case.

Exam. Berry: Well, why not eliminate the testimony in regard to it.

Mr. Cross: Because I say it is the foundation for our showing as to what the theory will do in general application. Now, we are going to show what it is going to do if you will apply this theory.

Exam. Berry: I must confess my inability to follow [fol. 540] your reasoning, but go ahead.

Mr. Cross: I think we can eliminate some of the description in connection with these exhibits, because they are self-explanatory.

Exam. Berry: Go ahead. All right.

By Mr. Cross:

Q. Go ahead.

A. This exhibit shows routes from Chicago via Baltimore and Ohio, C. I. & L., Erie, G. T., Pennsylvania Railroad, Wabash, C. S. S. & S. B., N. Y. C., N. Y. C. & St. L., C. M. St. P. & P. and C. & O., as origin lines, and these routes use two and not exceeding three lines, and in every instance the B. & O. Railroad receives a haul from Pittsburgh, Pa., Wheeling, W. Va., or west thereof. There are

no established routes from Chicago via connecting lines that do not give the B. & O. Railroad a haul at least from Pittsburgh or Wheeling. There are 46 routes listed on this exhibit.

My exhibit No. 31 is a statement similar to my preceding exhibit, and sets forth the routes from Decatur, Ill., to University, Baltimore, Aberdeen, and Sykesville. The origin lines are the B. & O., Wabash, Pennsylvania Railroad, Illinois Central, and Illinois Terminal. There are 33 routes listed on the exhibit and in every case the B. & O. would receive a haul from Pittsburgh, Wheeling, or a point west thereof.

(Exhibit No. 31, Witness Beggs, marked for identification.)

[fol. 541] The Witness: My next exhibit, No. 32, is similar to the preceding two exhibits and shows typical routes on grain and grain products from Peoria, Ill., to University, Baltimore, Aberdeen, and Sykesville. The origin lines at Peoria the P.R.R., N.Y.C., N.Y.C.&St.L., Alton, I.C., Illinois Terminal, C. B. & Q., C.I. & M., C.R.I. & P., T.P. & W., and C. & N.W. Forty-nine routes are shown, and as in the preceding exhibits covering Chicago and Decatur, the B. & O. Railroad would receive a haul from Pittsburgh, Wheeling or a point west thereof.

My next exhibit, No. 33, shows mileages via typical working routes from Chicago, Peoria, and Decatur to University, Baltimore, Sykesville, and Aberdeen, together with information as to number of interchanges required in each instance.

(Exhibits Nos. 32 and 33, Witness Beggs, Marked for Identification.)

The Witness: It will be noted that there are numerous routes available that entail no interchange and not exceeding one interchange. Certainly, with such multitude of routes that are not unduly circuitous and entailing either no interchange or only one it cannot be said that other routes which would break the hauls up into smaller segments and require additional interchanges are needed in the language of the amendment of 1940 to provide adequate and more efficient or more economical transportation.

[fol. 542] Q. Now, have you a series of sketches which show the practical operation of the theory upon which we understand the case is based?

A. Yes, I have a series of sketches consisting of eight exhibits, that is, Exhibits Nos. 34, 35, 36, 37, 38, 39, 40, and 41—Exhibits 34 to 41, inclusive.

Q. You can cover that series by an explanation of the first exhibit, can you not?

A. Yes. I think one explanation will suffice.

(Exhibits Nos. 34 to 41, Inclusive, Witness Beggs, Marked for Identification.)

A. The first one of this series of exhibits is No. 34, and shows the route from Chicago to University, D. C., via Wabash Railroad, Toledo, Ohio, and Baltimore and Ohio, via which the B. & O. haul is 584 miles. Contrasted with this route is shown route via Wabash Railroad, Toledo, Ohio, W. & L. E., Pittsburgh Junction, Ohio, P. & W. Va. to Connellsville, Pa., W. M. Railway to Hagerstown, Md., thence B. & O. Railroad to University. The B. & O. haul is reduced from 584 to 74 miles, or 87 percent. Via the normal route via Wabash Railroad-Toledo and B. & O. one interchange is required compared to four via the stated route.

By Mr. Cross:

Q. And the stated route is a route which would make Hagerstown directly intermediate?

A. Yes, it would.

[fol. 543] Mr. Hillyer: Mr. Cross, did I understand you to say you are offering this exhibit to show what this complainant was asking for?

Mr. Cross: No. I said to show the practical effect of applying the theory to other destinations.

Mr. Hillyer: Of course, you know we are not asking for any such thing.

Mr. Cross: I understand that.

Mr. Hillyer: All right.

Mr. Cross: At least I understand you are asking for something like this to a different destination.

Mr. Hillyer: No, we are not asking for anything like this. Please let the record so show.

Mr. Cross: What is your next exhibit, Mr. Beggs.

The Witness. My next exhibit, 42, depicts a route from Chicago to Strasburg, Va., via Pennsylvania Railroad, Wheeling, W. Va., Baltimore and Ohio Railroad to Frederick, Md., the transit point, thence to Strasburg, Va., via Harpers Ferry, W. Va. Via this route, which give the B. & O. Railroad a haul from Wheeling, W. Va., distance of 384.4 miles, there would be a back haul transit charge of $3\frac{1}{4}$ cents per 100 pounds in addition to the through rate from Chicago to Strasburg.

(Exhibit No. 42, Witness Beggs, marked for Identification.)

[fol. 544] The Witness: If the theory of complainant should prevail then there would be nothing to prevent shipper from insisting upon the establishment of a route via Pennsylvania Railroad from Chicago to Frederick, Md., thence B. & O. Railroad to Strasburg, Va., which would give the B. & O. Railroad but 76.3 miles haul in conjunction with the transit it grants.

Q. That exhibit shows how the present arrangements would be disturbed at Frederick?

A. Yes, it does.

Q. Now, your Exhibit No. 43.

(Exhibit No. 43, Witness Beggs, Marked for Identification.)

A. Exhibit 43 is a sketch depicting route from Chicago, Ill., to Richmond, Va., via B. & O. Railroad Potomac Yard, Va., and R. F. & P. Railroad, with transit arrangement at Charles Town, W. Va. Via this route there is a backhaul from Harpers Ferry to Charles Town and return of 20.4 miles for which transit charge of $3\frac{1}{4}$ cents per 100 pounds is charged. It is possible to make Charles Town intermediate between Chicago and Richmond via route of New York Central from Chicago to Cincinnati, Norfolk & Western Railway Cincinnati to Shenandoah Junction, W. Va., via Roanoke, Va., and Charles Town, thence Baltimore & Ohio Railroad to Potomac Yard and R. F. & P. to Richmond. This again illustrates the fallacy of establishing routes to accommodate the location of a transit mill.

[fol. 545] Q. What is your last exhibit?

A. My next and last exhibit, No. 44, is a sketch depicting the route from Chicago to Aberdeen, Md., via C. & O. Rail-

way, Cincinnati, Ohio, and Baltimore & Ohio Railroad with stop-off at Winchester, Va., for transit.

(Exhibit No. 44, Witness Beggs, Marked for Identification.)

The Witness: There would be a backhaul from Harpers Ferry, W. Va., to Winchester and return of 62.4 miles, for which a transit charge of $3\frac{1}{4}$ cents per 100 pounds would be charged. In order to make Winchester intermediate to Aberdeen without backhaul a route could be devised via C. & O. Railway from Chicago to Staunton, Va., via Cincinnati, thence Valley Railroad of Virginia to Harrisonburg, Va., thence Southern Railway to Strasburg Junction, Va., thence B. & O. Railroad to Aberdeen, via Winchester. Such a route would deprive the B. & O. Railroad of its long haul from Cincinnati of 653.7 miles and substitute a haul from Strasburg Junction of 161 miles.

There could be examples without number submitted to show what would happen to the established routes for handling carload freight between carriers if the theory advanced by the complainants should be recognized as proper.

Q. Now, Mr. Cross, on that last exhibit, how many interchanges would be involved in order to make Winchester intermediate?

[fol. 546] A. Four interchanges would be involved to make Winchester intermediate between Chicago and Aberdeen.

Mr. Cross: I wish to offer, Mr. Examiner, Defendants' Exhibits 26 to 44.

Exam. Berry: They will be accepted.

(Exhibit Nos. 26 to 44, Inclusive, Witness Beggs, Received In Evidence.)

Mr. Cross: That concludes Mr. Beggs' testimony.

Exam. Berry: Is there any cross-examination?

Mr. Hillyer: We have no questions.

Exam. Berry: The witness is excused.

(Witness excused.)

Exam. Berry: We will take a recess.

(There was a short recess taken.)

Exam. Berry: Let us resume, gentlemen. Call your next witness.

* H. B. THORNTON, being first duly sworn, testified as follows:

Direct examination.

By Mr. Eshelman:

Q. Will you give your name to the Reporter, Mr. Thornton.

A. H. B. Thornton, commerce agent, Pennsylvania Railroad, Room 431 Broad Street Station, Philadelphia, Pa.

Q. How long have you been engaged in freight traffic work?

A. I entered the service of the Pennsylvania Railroad [fol. 547] Company in freight traffic August 4, 1916.

Q. And you have been continuously engaged in freight traffic work?

A. Yes, sir; for the past 23 years, exclusively rate construction and commerce work.

Q. Have you prepared exhibits and testimony with respect to this case?

A. I have.

Q. Before proceeding with that, will you state whether you have made any study on the average inbound weight and the average outbound weight of complainant's shipments over the P. R. R. and out over the P. R. R.?

A. Yes, sir.

Inbound for the three months, May, June, and July, 1941, 217 cars inbound, average weight 66,044 pounds; outbound six months, December, 1940, to May, 1941, both inclusive, 383 cars, average weight 49,200 pounds.

Q. Taking up your exhibits, is the copy which you have given to the Reporter and the copy which you have given to the Examiner numbered in order, beginning with No. 45?

A. Numbered in order, beginning at No. 45 and concluding at No. 65.

Mr. Eshelman: If we may then follow the same procedure, Mr. Examiner.

Exam. Berry: Yes, Mr. Eshelman.

[fol. 548] (Exhibits Nos. 45 to 65, Inclusive, Witness Thornton, Marked for Identification)

By Mr. Eshelman:

Q. When was the transit arrangement on grain and its products originally established at Hagerstown, Md., by the P. R. R.?

A. As Exhibit No. 45 will show, the arrangement became effective May 5, 1921, in P. R. R. G. O. I. C. C. No. 11227.

Q. Do the points shown on this exhibit as origin territory and destinations present a representative picture of the situation including its historical development and present status?

A. They do.

Q. And as to the changes in the out-of-route or back-haul charges, does the exhibit present a concise summary of the changes?

A. Yes. All of the changes in these charges between the points shown are included in the exhibit.

The tariff effective May 5, 1921, carried both the feed-mixing and milling-in-transit provisions. The exhibit traces the feed-mixing situation through from its inception to the present date. The present milling-in-transit arrangements, quite generally, are the same as those applicable to feed-mixing.

As shown in the last item on sheet 1 of this exhibit, in so far as the feed-mixing tariff is concerned, provision was [fol. 549] made for the absorption of W. M. switching in and out, effective October 20, 1939.

Similar provision was made in the milling-in-transit tariff applicable at Hagerstown, and the same arrangement is covered by Supplement No. 5 to P. R. R. I. C. C. No. 2220, effective October 20, 1939.

Q. Will you refer to the first item on page 2 of this exhibit. Was the expiration date also eliminated from the switching absorption provision in the milling-in-transit tariff at Hagerstown on or about the same date as this elimination became effective in Supplement No. 16 to I. C. C. 2117, the then effective feed-mixing tariff?

A. Yes. It was eliminated by Supplement No. 14 to P. R. R. I. C. C. No. 2220, effective November 18, 1940.

Q. What does the exhibit show with relation to the out-of-route or back-haul charges?

A. That from origins west of Pittsburgh the charge is at present the same as when originally established effective May 5, 1921, and that from the other origin territories shown, Pittsburgh Local, Buffalo Local, and east of Pittsburgh, the charge is now substantially lower than when originally established. It also shows that the origin terri-

tory has been increased, as illustrated by the addition of Buffalo beyond (ex Canada), effective September 22, 1926.

Q. What else does the exhibit show?

[fol. 550] A. That the absorption of the W. M. switching charge both inbound and outbound is now provided for. The charge is now \$6.93 per car in each direction; thus a total absorption of \$13.86 is made on each complete operation—that is, delivery of the inbound car to the complainant's plant and receipt of the outbound car from the Stickell Company plant.

Q. Do you have any comment to make in connection with this switching absorption?

A. Yes. It was a voluntary concession that resulted in a substantial saving to the complainant.

Q. Why do you regard this as voluntary?

A. Because the complainant in this proceeding in Docket No. 18452 sought to have this very absorption prescribed. In two decisions the Commission declined to order The Pennsylvania Railroad to make these absorptions.

Q. Can you furnish the citations?

A. 151 I. C. C. 364, decided January 25, 1929, and 156 I. C. C. 373, decided July 9, 1929.

Q. Will you please give specific reference to the present tariff granting transit privileges on grain mixed into feed at Hagerstown, Md., when the inbound and outbound movements are via the P. R. R.?

A. P. R. R. tariff I. C. C. No. 2442.

Q. Have you prepared an exhibit covering application of this tariff?

[fol. 551] A. Yes, with particular reference to the back-haul or out-of-route charge provisions it contains. It is exhibit No. 46.

Q. Please explain the exhibit.

A. I must first refer to the provisions of the transit tariff. The tariff provides transit charge of one-half cent per 100 pounds, minimum \$3.96 per car. It also provides that when the transit point, which in the matter under discussion is Hagerstown, Md., is directly intermediate between origin and destination, the charge on the shipment shall be the through rate on the outbound product from point of origin to destination plus transit charge. When an out-of-route or back-haul is involved due to the location of the transit point with reference to the locations of the origin and desti-

nation, there is a scale of rates on a mileage basis provided for such additional movement.

Q. That is a general description of the transit tariff. How about the exhibit?

A. The exhibit shows the exceptions to the general mileage scale basis for the back hauls involved in transit at Hagerstown, Md. The major exception is the charge of 4.5 cents in lieu of the higher charge under the scale, generally 7.5 cents per 100 pounds. The exhibit was prepared on the basis of the exceptions to the general back-haul scale, but wherever some groups are covered by an exception from either an origin or destination standpoint, the remainder [fol. 552] of that line is filled out on the regular scale basis. In the vast majority of cases the back-haul charge is materially lower than the scale.

Q. On page 2 of your preceding Exhibit No. 45 you make reference to two letters from the complainant to the Pennsylvania. With respect to the second one, which asks for the ability to reach certain territory, will you state whether or not that has been provided for since the time of that letter and in connection with that explanation how the Exhibit 46 works, that is, how you apply it to determine that situation.

A. Yes, sir.

The complainant's request, as contained in the second letter on sheet 2, Exhibit No. 45, has since been complied with.

Taking the specific case of grain originating on the Cumberland Valley and destined to a point east of Harrisburg we can find the back-haul charge from Exhibit No. 46 by referring to page No. 1 of that exhibit, section No. 1. We find that the Cumberland Valley is in two groups, No. 53 and No. 54, the bottom group on the righthand side of page 1 of Exhibit No. 46.

Group 54, the lowest end of the Cumberland Valley, runs from Fayetteville, Pa., to Winchester, Va.

Page 2 of Exhibit 46 shows a grouping of the destination territory, and if we are to take Philadelphia as illustrative as a destination we find that that is included in group No. 7. Thus the out-of-route charge from group No. 53 to group [fol. 553] No. 7 is shown on page 5 of the exhibit, and is $3\frac{1}{4}$ cents per 100 pounds or materially lower than the general charge of $4\frac{1}{2}$ cents per 100 pounds that I have explained at some length previously.

Further, for convenience in Exhibit 46, page 3, section 3, there is a map of the eastern section of the Pennsylvania Railroad and the origin and destination groups which have the same station index numbers, are blocked off as to the origin and destinations further.

Q. So that by reference to the map and the tabulations that you have there can be ascertained what, if any, back-haul charge is applicable in connection with any of these movements?

A. Yes, sir.

At this point, Mr. Eshelman, it might be well to explain generally if a destination on the Pennsylvania Railroad is a junction point with a connecting line, bears the same charge for movement to that connection as if the destination were right on the P. R. R. tracks at the point.

Q. So far you have discussed feed-mixing in transit. Are there any other grain transit operations in which the complainant engages at Hagerstown, Md.?

A. Yes, milling-in-transit. That is converting grain into flour.

Q. Under what P. R. R. tariff is that operation performed [fol. 554] in transit at Hagerstown, Md.?

A. P. R. R. tariff I. C. C. No. 2220.

Q. What are its provisions?

A. Generally quite similar to those of P. R. R. I. C. C. No. 2442.

Q. Why was your analysis of the feed-mixing tariff, P. R. R. I. C. C. No. 2442, more complete than of the milling-in-transit tariff, P. R. R. I. C. C. No. 220?

A. For two reasons. First, because the tonnage moving under the feed-mixing tariff, I. C. C. No. 2442, is much heavier than that moving under the milling tariff, I. C. C. No. 2220; and, secondly, because the tariffs are quite similar in provisions and a full description of both would, to a very large extent be a repetition.

Q. Where a back haul is involved in connection with transit operations on grain and its products, what is the general method or basis for computing the charges?

A. In addition to the through rate from origin to destination as modified by the generally applicable "three-way" rule and the transit charge, there is also assessed a specific charge in cents per 100 pounds or per ton for the additional service occasioned by such out-of-route or back haul.

Q. In general, what are the provisions of the three-way rule?

A. It provides that in addition to any and all accessorial charges such as that for the transit service and out-of-route or back-haul charges in cases in which an additional haul is [fol. 555] involved due to the location of the transit point with relation to the origin and destination, that the line haul freight charges shall be settled on the highest of the following three rates:

First, the rate from point of origin to ultimate destination, or, second, the rate from point of origin to transit point, or, third, the rate from the transit point to ultimate destination.

Q. Has the Interstate Commerce Commission considered the three-way rule in connection with shipments accorded transit?

A. It has, and has approved it. I refer particularly to Docket No. 28378, Diamond Cold Storage Company v. S. A. L. Railway, et al., 241 I. C. C. 607, decided October 8, 1940; and to Docket No. 17000, Part 7, Grain and Grain Products within the Western District and for export, 205 I. C. C. 301, decided October 22, 1934. At page 413 the Commission stated in this particular case: "The rule seems to be a necessary and reasonable transit requirement." Please observe that in this instance the rule was upheld specifically for application on grain and grain products, as it was also in Docket No. 26140.

Mr. Craig: Mr. Eshelman, is the witness contending the Commission ordered the three-way rule in?

The Witness: I stated the Commission sanctioned it.

By Mr. Eshelman:

Q. Will you give the other citation.

A. Docket No. 26140, Red Star Milling Company v. Aberdeen and Rockfish Railroad Company, et al., decided February 21, 1938, 226 I. C. C. 289 at 291. The three-way rule was also upheld in F. S. A. No. 16599, Transit Rates on Class Traffic, decided May 12, 1937, 222 I. C. C. 355 at 357.

Q. Are mileage scales published for out-of-route or back-haul services?

A. Yes.

Q. What is the back haul on movements over the P. R. R. with transit at Hagerstown, Md.—that is, on traffic originating west of Marysville, Pa., and terminating east of Harrisburg, Pa.?

A. 149 miles.

Q. What is the out-of-route and back-haul charge for that mileage?

A. 7.5 cents per 100 pounds, as published in Item 160 of P. R. R. tariff I. C. C. No. 2442, covering transit arrangements on feed. This figure of 7.5 cents per 100 pounds is the charge usually applied for back hauls of from 101 to 150 miles on grain given transit in Trunk Line territory.

Q. What is the generally applicable back-haul charge applicable in connection with grain transit, particularly feed-mixing, for such transit operation at Hagerstown, Md.?

A. 4.5 cents per 100 pounds.

Q. That is lower than the scale basis?

A. Substantially lower than the scale basis. The 4.5-cent [fol. 557] charge actually applied is 3 cents per 100 pounds, or 40 percent lower than the mileage scale basis. Stated differently, it is but 60 percent of the mileage scale basis.

Q. Have you prepared an exhibit illustrating the comparative back-haul charge situation at Hagerstown, Md., as contrasted with other feed-mixing and milling-in-transit points on the P. R. R. at which these operations are performed under transit tariff provisions?

A. Yes. Exhibit No. 47, an exhibit of 13 pages, consisting of a titled page and a separate page for each of 12 competitive transit points—

Mr. Hillyer: Just a minute, Mr. Examiner. I have just one question.

He has just finished Exhibit No. 46. Before he goes on to Exhibit No. 47, as I understand Exhibit No. 46 it is an attempt to justify the back-haul charge from Hagerstown to Harrisburg; is that it?

Mr. Eshelman: Well, I would not limit it to that, no. We are trying to make a general showing of the situation, and I think the general theory of our case will show it is all part of one showing and it would not be correct to say that that is the sole reason for putting it in.

The Witness: Yes, Exhibit No. 47, an exhibit of 13 pages, consisting of a title page and a separate page for each of 12 competitive transit points; that is, points at which grain is [fol. 558] milled, or mixed in transit in competition with

Hagerstown, Md. The exhibit is largely self-explanatory. Fifteen representative destinations have been used in each sheet, and for convenience the Hagerstown situation is shown at the left of each sheet, and that prevailing at the competitive transit point at the right of the 12 sheets of the exhibit.

Q. Are the competitive transit points chosen for the purpose of this exhibit representative, in your opinion?

A. Yes. They are all located in the Central and eastern portions of Trunk Line territory on the P. R. R. The sources of grain to be transited and the marketing or sales territories they could hope to reach by reason of their respective locations are the same as the sources of supply and distribution now used and desired by the Hagerstown complainant.

Q. Have you made any summary of this exhibit?

A. I have summarized certain of the data shown on the exhibit. Thus there are 12 competitive milling or mixing points covered by the exhibit. Column F of each sheet shows the excess or out-of-route mileage involved at Hagerstown, and Column H the charge for such out-of-route service. The average out-of-route haul, when transit is performed at Hagerstown, is 148.6 miles, and the charge therefor is 4.5 cents per 100 pounds.

Q. How did you figure your comparisons?

A. On sheets 2 to 13, both inclusive, Column M shows the excess or out-of-route mileage at the other transit points—[fol. 559] Bedford, Pa., etc., and column O of the sheets shows the out-of-route charge at those points when destined to points shown on the exhibit, all 15 of which are uniform throughout. Columns M and O are averaged for each of the 12 transit points. The total for these averages is: Column M or excess mileage 1,222.2 miles, and column O or out-of-route charge 52.87 cents per 100 pounds. Dividing these total figures by 12, the number of transit points competitive with Hagerstown shown on the exhibit, we have average out-of-route mileage for the 12 competitive transit points of 101.85 miles, and average charge therefor 4.41 cents per 100 pounds.

The Hagerstown out-of-route distance is 148.6 miles, and the average charge is 4.5 cents per 100 pounds. For the 12 competitive transit points average out-of-route distance is 101.85 miles, and average charged therefor is 4.41 cents per 100 pounds. To state it somewhat differently, the Hagers-

town out-of-route distance is about 50 percent greater than the average from the 12 competitive transit points, while the Hagerstown charge therefor is but 2 percent greater than the average.

Q. What is the revenue per mill per ton mile at the Hagerstown figures of 148.6 miles and 4.5 cents charge?

A. 6.057 mills.

Q. What is the revenue per mill per ton per mile on the average figures from the 12 competitive transit points, [fol. 560] which figures are 101.85 miles and 4.41 cents per 100 pounds?

A. 8.660 mills.

Q. And what percentage does the mills per ton per mile Hagerstown out-of-route revenue bear to the average figure for the 12 competitive transit points?

A. Hagerstown mills per ton per mile revenue is 69.94 percent of the average mills per ton per mile revenue from the 12 competitive transit points.

Q. You speak of 12 competitive transit points. Are they the only points at which milling or mixing-in-transit are available on the P. R. R. Lines east?

A. No. There are numerous other points at which grain is handled and processed under transit arrangements both on the P. R. R. and other Official territory railroads. The points on the P. R. R. in Trunk Line territory are those covered by P. R. R. tariffs I. C. C. No. 2220 and I. C. C. No. 2442, but the points shown on this exhibit are representative.

Q. Reverting to the 12 points used in the exhibit as typical competitive points subject to a back-haul charge to the 15 destinations shown, is their geographical situation such that the operators at those points could likewise ask for the prescription of through routes which, if prescribed, would eliminate the back-haul charge?

A. It is in nine out of the twelve examples.

Q. Which three points are so located as not to be susceptible to such a complaint as that involved in this case?

A. Elizabethville, Reedsville, and Dillsburg, Pa. These points are located on relatively short branch lines, beyond which on said branches there is no connection with another Trunk Line rail carrier. They would be at a disadvantage.

Q. If the operators at the other nine transit points desired such routes, what would be illustrative routes which, if pre-

scribed, would eliminate the back haul? Explain the situation "alphabetically" as to these nine transit points.

A. Bedford, Pa. The operator at Bedford, Pa., could seek routes via lines beyond, that is, west of the B. & O. or W. M., thence B. & O. or W. M. through Hyndman, Pa., and State Line, Pa., respectively, thence P. R. R.

Cumberland, Md. Cumberland is another interchange point between the P. R. R. and the W. M., so that routes employing the W. M. or its western connections into Cumberland, Md., thence P. R. R. would be comparable to what the Hagerstown operator is seeking here.

Greencastle, Pa. Greencastle, Pa., is located on the Cumberland Valley Branch of the P. R. R. between Hagerstown and Harrisburg, so that a route via W. M. Railway or W. M. Railway and its western connections, Hagerstown, Md., P. R. R., would establish Greencastle, Pa., on the direct line.

Frederick, Md. Frederick, Md., in addition to being a grain transit point, is an interchange point with the B. & O. [fol. 562] Railroad and hence any route comprising the B. & O. or the B. & O. and its western connections into Frederick, Md., thence P. R. R. from Frederick would make Frederick directly intermediate.

Littlestown, Pa. Littlestown, Pa., is located on the Frederick Branch of the P. R. R. between York, Pa., and Frederick, Md., and Littletown would be directly intermediate via (1) B. & O. or B. & O. and its western connections, Frederick, Md., P. R. R., or (2) via W. M. or W. M. and its western connections, Keymar, Md., P. R. R.

Norfolk, Va. Norfolk, Va., would be intermediate via routes comprising the C. & O., N. & W., and Virginian, or these roads and their western connections into Norfolk, Va., thence via P. R. R. from Norfolk, Va.

Reading, Pa. Reading, Pa., would be intermediate via routes consisting of the C. F. A. lines or those lines and their western connections into Buffalo, N. Y., thence L. V. Railroad, Wilkes-Barre, Pa., and P. R. R. Or Reading, Pa., would be intermediate on a route comprising the C. F. A. lines into Buffalo, N. Y., thence Erie Railroad to Binghamton, N. Y., thence D. & H. to Wilkes-Barre, Pa., thence P. R. R.

Schuyler, Pa. Schuyler, Pa., would be on the direct line of a route comprising the Erie Railroad or N. Y. C. Railroad or either of these lines and its western connections to New-

berry Junction, Pa., thence Reading Company to Paper [fol. 563] Mill, Pa., thence P. R. R.

South Danville, Pa. South Danville, Pa., is located on the P. R. R. branch between Sunbury and Wilkes-Barre, Pa., and the same routes that would make Reading, Pa., intermediate would place South Danville on the direct line.

Q. Have you prepared an exhibit showing this situation in graphic form?

A. Yes. Exhibit No. 48 gives two examples of theoretical routes to establish a transit point on the direct line which would result in short hauling the P. R. R. These two diagrams or charts are self-explanatory, and the mileage data are included upon them.

Q. How about the back-haul charges on the two examples, are they subject to back-haul charges?

A. Yes, sir. If we will revert to Exhibit 47, the first example, transit at Reading, the destination Salisbury is covered on sheet 10 of Exhibit No. 47, and it will be seen that the out-of-route charge in the instance you mentioned is $3\frac{1}{4}$ cents per 100 pounds, shown under column O, the last column at the right.

Q. Now, without mentioning how you arrive at it, from that same exhibit, what is the out-of-route charge on the illustration Toledo to Lambertville?

A. Toledo to Lambertville, transit at Green Castle, that is on sheet 7 of the preceding exhibit, and the out-of-route [fol. 564] rate is $4\frac{1}{2}$ cents per 100 pounds.

Q. Now, I take it, in referring to these typical routes that could be established through these nine transit points, that you are citing them as a danger signal and not advocating their establishment.

A. I am positively not advocating their establishment. They fall in the same general category as the sought routes to establish Hagerstown on the direct line; they are objectionable, uneconomical, and in many instances entail much circuitry. Further, as in the case of what is sought by the complainant for Hagerstown, such routes would involve not only increased mileage, but additional and unnecessary interchanges between road-haul carriers. The sought routes via Hagerstown covered by the instant complaint and those which would place the nine other competitive transit points on the direct line all have one other point in common, and that is that they would make the estab-

lishment of such routes an incident of transit, which would be a departure from the well-established principle that transit is an incident of the route.

Exam. Berry: You have got a through route now, haven't you, Pennsylvania via Hagerstown?

Mr. Eshelman: Do you mean such as the complainant asks?

Exam. Berry: No. You got one via the Pennsylvania today, a through route, the through rate does not apply, you got the through route.

[fol. 565] Mr. Eshelman: Do you mean ~~via~~ Hagerstown?

Exam. Berry: Yes.

Mr. Eshelman: Subject to back-haul.

Exam. Berry: Yes. The complainants ask that they be given another route, a route over which it would be directly intermediate, and that they be given a joint rate. Now, it is not my understanding that you are contending that the routes they are asking for is circuitous.

Mr. Eshelman: We haven't got to that yet. I would rather that would wait for the mileage, rather than have him express the opinion.

Exam. Berry: I thought he was just talking about it being unduly circuitous.

Mr. Eshelman: He said some of the others might be.

Exam. Berry: I thought you mentioned this in connection with the nine others.

The Witness: That will be covered a little later.

Exam. Berry: How?

The Witness: That will be covered a little later in the testimony.

By Mr. Eshelman:

Q. What were you saying about the establishment of through routes?

A. The establishment of through routes and joint rates merely for the purpose of according transit, or, more correctly, of eliminating a back-haul charge in connection with [fol. 566] available transit, would entail a reversal of a long-observed and eminently sound traffic principle.

Q. Has the tendency in recent years been toward the elimination of uneconomical or circuitous routes, rather than toward the establishment of additional routes.

A. Yes. In response to suggestions of the Federal Coordinator, the railroads some years ago made studies of circuitous or uneconomic routes and eliminated many of them. Others of the same sort failed of elimination for lack of consent of all participants. For example, effective July 1, 1933, there were canceled from the P. R. R. west-bound routing guide from Trunk Line to C. F. A. territory 1,574 such routes—

Exam. Berry: Now, do you need to go into that? If you can show this route is uneconomical and unduly circuitous, the Commission won't prescribe it.

Mr. Eshelman: I might say that we thought it was not without probative value. You may not agree with us, but we thought it was a fact, even if it be a simple fact, we were entitled to rely upon that. The tendency in recent years, from the standpoint of economic railroad operation, is rather to hold down routes which go around rather than to put new ones in, and this was merely the fact that we had adduced in support of that thought.

Exam. Berry: It is not my understanding that there has been any evidence put in to show that this route is unduly [fol. 567] circuitous or uneconomic.

Mr. Eshelman: Well, this is background. If we get some, it might be some, it might not be, you might say that they conclude that some routes are pretty short routes, others are longer, but for whatever value it is we should like to have the facts in.

Exam. Berry: Go ahead.

Mr. Hillyer: Mr. Examiner, might I note here that we are really asking for a route whose distance is comparable with anything that they can offer serving these same points, and the route we are offering also obviates or eliminates an unnecessary expensive back-haul.

Exam. Berry: Go ahead.

Mr. Hillyer: Now, that is what we are asking for. We are not asking for any great spread of routes, such as you are talking about. We are trying to narrow this down to something that is economical.

By Mr. Eshelman:

Q. Continue, Mr. Thornton.

A. And effective on the same date there were canceled from the P. R. R. eastbound routing guide from C. F. A. to

Trunk Line territory 3,868 such routes. In addition, the Official territory lines have since adopted and made effective gateway routing guides applying to Western Trunk Line territory, and the routes contained in this gateway routing guide for application to Western Trunk Line territory are not so liberal or numerous as the routes contained [fol. 568] in the routing guides applying within Official territory.

The rail carriers have been interchanging traffic through regularly established interchange points for many, many years, and in the course of these years a system or fabric of routes has developed to fit the needs of the commerce of the territory served. The establishment of additional routes merely for the purpose of eliminating back-haul charges at transit points would disturb the normal flow of traffic.

Q. Have you prepared an exhibit illustrative of the effect of the "sought" routes on the P. R. R. haul?

And here again I shall have to ask the indulgence of the Examiner and the complainant as to what might be called "sought" routes. We are not trying to tell him what he asks, but this is our understanding of what he did at the time.

A. Yes. No. 49. It covers what are probably the four most important grain shipping points in C. F. A. territory, all of which are reached by the P. R. R. as well as other C. F. A. lines and four local P. R. R. destinations in Eastern Trunk Line territory.

Q. What does the exhibit show, generally speaking?

A. The P. R. R. direct distance, the distance of the P. R. R. haul from its shortest direct junction point with the other roads serving the origin, which latter figure is the shortest haul the P. R. R. would receive under existing [fol. 569] rates and routes and also the P. R. R. distances beyond York and Fulton Junction as sought in the complaint. The exhibit also shows the percentage which the P. R. R. haul from York and Fulton Junction, as sought, reflects of the P. R. R. direct haul and of the P. R. R. shortest haul under existing routes.

Q. Does the exhibit indicate that the P. R. R. would be short hauled?

A. Yes, very materially. It shows that via Fulton Junction we would receive hauls ranging from 8.63 percent to

17.18 percent of our direct haul and but 19.39 percent to 35.23 percent of our present shortest haul. Via York it shows that we would receive hauls ranging from 7.59 percent to 19.29 percent of our present direct haul and from but 16.84 percent to 35.01 percent of our present shortest haul.

Q. Is this showing made by this exhibit representative?

A. Yes. While but four origins and four destinations have been shown the geographical location and importance of these points is such as to make the exhibit illustrative.

Q. Are there any points at which transit arrangements on grain are published which are located closer than Hagerstown to that territory on the P.R.R. known as the Del-Mar-Va Peninsula?

A. Yes. Cambridge, Md., and Norfolk, Va., are closer to the Peninsula than is Hagerstown. Cambridge is located right in the heart of the peninsula and Norfolk—or, more properly, Portsmouth, is just across the Chesapeake [fol. 570] Bay from Cape Charles, Va.

Q. What is the situation with respect to transit at Cambridge, Md., and Norfolk, Va., to representative destinations on the peninsula?

A. Fifteen representative peninsula destinations have been shown on Exhibit No. 50—

Exam. Berry: Before you leave Exhibit 49, your direct route from Chicago to Salisbury is shown as 902 miles.

The Witness: Yes, sir.

Exam. Berry: Now, there is another route, the Pere Marquette, Buffalo, and the Pennsylvania beyond, 497 miles, you get—is transit permitted on the Pere Marquette any place?

The Witness: I imagine, Mr. Examiner, transit is permitted on the Pere Marquette between Chicago and Buffalo; that is, the whole range of territory, Illinois, Michigan.

Exam. Berry: That would seem to contradict the implied contention or thought that may have been advanced here, where you have a direct route you do not join with another carrier where your short haul—where there is transit on the other carrier.

The Witness: No, Mr. Examiner. I do not see that it does. It confirms it. You will recall this morning it was brought out, the complainant is now getting bran and

middlings which were transited at Indianapolis and other [fol. 571] points in Central Freight Association.

Exam. Berry: Other carriers than Pennsylvania, where you had a direct route from origin?

The Witness: We receive the traffic——

Exam. Berry: Isn't he asking for the same thing here in connection with the Western Maryland which you are doing in connection with the Pere Marquette, only you are getting a shorter haul?

The Witness: Well, I can't see it that way, Mr. Examiner.

Mr. Eshelman: Well, we are not here to argue, but what is the situation generally, or will you describe it later in your testimony concerning the routes of the Pennsylvania from C.F.A. origins on other lines, and does your testimony—have you stated or will you state what that general situation is as to interchange points with other lines.

The Witness: Yes, sir.

By Mr. Eshelman:

Q. Whether that is in C. F. A. or Trunk Line territory, and how this worked.

A. Very completely.

Mr. Eshelman: I think you anticipated a point that we are going to cover.

A. Fifteen representative peninsula destinations have been shown on Exhibit No. 50, and they cover the peninsula from end to end; that is, from north to south and from east to west. To these fifteen destinations grain can be [fol. 572] mixed into feed under transit at Hagerstown at a lesser out-of-route charge than at either Cambridge or Portsmouth on the average, and in no case is there a lower out-of-route charge applicable for transit at either Cambridge or Norfolk or Portsmouth than applies in connection with transit at Hagerstown.

Q. Have you made any study showing the comparative opportunity, from the standpoint of transit operation, under existing tariffs of the complainant to serve eastern markets in competition with operators more closely located to such markets?

A. Yes. Exhibit No. 51 shows ten such representative destinations, all east of Hagerstown, Md., and at all of

these ten points transit operators of grain products are located. From the figures shown in columns under caption "Feed Mixing in Transit at Hagerstown, Md., it will be observed that Hagerstown can reach all ten destinations at an out-of-route charge of 4.5 cents per 100 pounds when the movement is over the P.R.R.

Q. Suppose the movement were over lines other than the P.R.R.

A. The exhibit shows seven of the destinations can be reached via presently effective routes providing for transit at Hagerstown without out-of-route or back-haul charge. See specifically explanation of Notes 1, 2, and 3.

Q. Does Hagerstown have any advantage other than shown on the exhibit?

[fol. 573] A. Yes. Provided the grain is drawn from a very large available territory in C.F.A. on the P.R.R. or from Western Trunk Line points moving via Effner or Chicago thence P.R.R., the transit operator at Hagerstown can reach Portsmouth, Va., by N. & W. absorption of the switching charge at the going line-haul rate plus the transit charge without back-haul or out-of-route charge.

Q. How is this possible?

A. Because routes are available from P.R.R. origin territory in C.F.A. to destinations on the N. & W. between Norfolk and Roanoke, Va., via P.R.R., Hagerstown, Md., and N. & W. Railway.

Q. So that in the ten instances shown as destinations on the exhibit the complainant can presently reach eight of them via available tariff routes from C. F. A. or Western Trunk Line territory with transit at Hagerstown without out-of-route or back-haul charge?

A. Yes.

Q. And is this situation quite representative of that generally prevailing?

A. It is quite representative. There are routes now open for transit at Hagerstown to a large part of eastern territory via which transit at Hagerstown is not subject to back-haul or out-of-route charge.

Q. What is the situation with respect to the competitive [fol. 574] points; that is, the points at which transit is also performed in the event such operators desire to sell in the Hagerstown market?

A. The figures in the righthand columns of this exhibit depict this situation. On grain originating in C. F. A.

transited at the ten points shown on the exhibit destined Hagerstown when moving via the P. R. R. the average out-of-route haul is 206.7 miles, or 138.08 percent of the Hagerstown average circuitry of 149.7 miles, as shown on the exhibit, and the average additional charge, out-of-route or local rates, as shown, is 12.4 cents per 100 pounds or 275.56 percent of the Hagerstown out-of-route charge of 4.5 cents per 100 pounds. It should be remembered that to eight of the ten points in question Hagerstown now has available routes via which the flat line haul rate applies without back haul charge.

Q. Please proceed with your comparison Hagerstown versus the other ten transit points?

A. If we omit Portsmouth, Va., and consider the remaining nine transit points and compare the current back-haul scale on grain products accorded transit for the average extra haul of 160.7 miles, we have an average out-of-route scale charge of 8.3 cents per 100 pounds for this distance. In other words, the extra distance is but 107.35 percent of the excess distance via Hagerstown of 149.7 miles, while the out-of-route scale of 8.3 cents is 184.44 percent of the Hagerstown average out-of-route charge of 4.5 cents per 100 pounds.

Q. Do the competitive points have any other disadvantage not present in the case of Hagerstown, Md.?

A. Yes, six of the ten points shown have an additional disadvantage in reaching Hagerstown, which Hagerstown does not have in reaching these same points under transit.

Q. What is it?

A. The transit tariffs are subject to the three-way rule, and as five of the points shown are subject to Philadelphia grain rates and one of them is subject to New York grain rates ex C. F. A. and Western Trunk Line territories, the five points subject to the Philadelphia basis pay a line-haul rate one cent per 100 pounds higher than the Baltimore rate, to which Hagerstown is subject, and Bordentown, N. J., would pay the New York rate, which is 3 cents higher than Baltimore basis. This increased rate for the line-haul service is over and above the charge for transit and back haul, and correspondingly increases Hagerstown's competitive advantage.

Q. Can any of the ten transit points competitive with Hagerstown reach the Hagerstown market via routes other

than the P. R. without out-of-route or back-haul charge or rate penalty under the three-way rule?

A. No, sir. They cannot.

Q. In the discussion of the map exhibits, covering the C. F. A. origin territory mention was made of an additional [fol. 576] situation involving rates and routes over P. R. R. stations to N. & W. destinations. Have you prepared an exhibit to cover this?

A. Yes, two exhibits. No. 52 is a statement showing the origin territory on the P. R. R. and certain lateral lines and also the destination territory on the N. & W. between which the grain rates apply via P. R. R.-Hagerstown, Md.-N. & W. Railway, thus establishing Hagerstown directly intermediate and permitting transit at Hagerstown without back-haul or out-of-route charge. Exhibit No. 53 is a map depicting this situation.

Q. Just what P. R. R. origin territory is covered?

A. Grain rates apply to N. & W. points via Hagerstown from C. F. A. territory served by the P. R. R. from all points east of Columbus, Ohio, from points Toledo, Ohio, Detroit, Mich., and each thereof, from the former G. R. & I. Railway Fort Wayne, Ind., to Mackinaw City, Mich., from the main line of the Fort Wayne routes west to Chicago, inclusive, and also from certain branches.

Q. And the territory of origin and destination are indicated by the heavy black lines on the upper and lower portions, respectively, of your Exhibit No. 53?

A. Yes, sir.

Q. So that a very large and important origin territory is covered?

A. Yes, sir.

Q. What N. & W. stations are covered from a destination [fol. 577] standpoint by these rates and routes?

A. The N. & W. line from Norfolk to Salem, Va., which latter point is just west of Roanoke, Va.; the branch extending to Durham, N. C., as far south as Brookneal, Va., inclusive; and the Shenandoah Division from St. James, Md., the first station south of Hagerstown, Md., to Roanoke, Va., inclusive. Certain branches are also covered.

Q. So that quite a large territory from both the origin and destination standpoint is involved?

A. Very extensive, yes.

Q. Does this situation result in any other advantage to the complainant in his grain transit operation at Hagerstown, Md.?

A. It gives him additional origin and destination territories of great extent and importance over and above the points shown on the statement and map.

Q. In what manner?

A. There are no through one-factor rates published on grain and grain products from C. F. A. or W. T. L. territory points to Southern territory; all of such rates being made on combination basis over the Virginia cities, generally Lynchburg, Va.

Thus the situation covered by Exhibit No. 52 results in the complainant having the going and currently applicable combination basis over the Virginia cities and of the Chicago reshipping rate applicable on grain originating in Western Trunk Line territory.

[fol. 578] The result is that the complainant at Hagerstown, Md., can secure grain at many points in C. F. A., including Toledo, Ohio, and Chicago, Ill., and also from Western Trunk Line territory via Chicago on as low a basis as any of his C. F. A. or Trunk Line competitors, and serve the Virginia cities, southern Virginia, the Carolinas, and Georgia on as favorable a basis of rates as is available to any of his Trunk Line territory or Virginia competitors. Please understand that no back-haul or out-of-rate charge is involved when the movement is via Hagerstown over the P. R. R.-N. & W. route in the cases I have just cited.

Q. How valuable are the destinations available on the N. & W. from the standpoint of tonnage potentiality?

A. They are quite valuable. Aside from Southern territory, a very extensive destination territory on the N. & W. is open without out-of-route or back-haul charge to transit operation of grain at Hagerstown, Md.

Q. When were the rates covered by Exhibit 52 established?

A. For many, many years the rates applied via P. R. R.-Hagerstown, Md.-N. & W. from P. R. R. territory in C. F. A., Cleveland, Vernon, Crestline, Mt. Vernon, Newark, Marietta, Ohio, and east thereof.

Q. How about Toledo, Fort Wayne, South Bend, Chicago, Grand Rapids?

A. The Hagerstown route from the P. R. R. stations west [fol. 579] of the Cleveland-Crestline-Newark-Marietta line

to the territory in question on the N. & W. Railway was established effective September 1, 1936, in Supplement No. 60 to P. R. R. I. C. C. No. 399.

Q. If you know why this additional P. R. R. territory was so covered via Hagerstown, Md., will you please state the reason?

A. The additional P. R. R. territory just described was provided with the Hagerstown, Md., route to the N. & W. to meet a competitive situation existing via the B. & O. Railroad. The B. & O. origin territory in C. F. A. routing to the N. & W. points in question via Shenandoah Junction, W. Va., was more extensive than the P. R. R. territory in C. F. A. covered via Hagerstown to the N. & W. This extension of P. R. R. C. F. A. origin territory via Hagerstown was made to meet the B. & O. competitive situation through Shenandoah Junction.

Q. Was Hagerstown intermediate on the B. & O.-Shenandoah Junction-N. & W. route?

A. No, sir. A back-haul charge would be involved for grain transit at Hagerstown via the B. & O.-Shenandoah Junction-N. & W. route.

Q. But with the establishment of the P. R. R.-Hagerstown-N. & W. route the complainant's operation became directly intermediate, did it not, so that complainant can receive and he received the benefit of all of this additional [fol. 580] territory both from the origin and destination standpoints at the flat rate without back-haul or out-of-route charge?

A. Yes.

Q. So that the action you have just described resulted to the material benefit of the complainant?

A. Yes, it did.

Q. Have you any further comments on this particular phase of the matter?

A. Exhibit No. 52 and map Exhibit No. 53 now under discussion should be considered as modifying the general map exhibits of C. F. A. territory and Trunk Line destination territories, numbered 6 to 9. This modification is, of course, favorable to the complainant.

Q. What is the situation in the reverse direction; that is, from points on the N. & W. to destinations on the P. R. R.?

A. Effective July 31, 1937, as a part of the adjustment just described, a route via N. & W.-Hagerstown, Md.-P. R. R. was established from all N. & W. stations in C. F. A. terri-

tory—that is, from 6660 Ceredo, W. Va., to 7235 Cincinnati, Ohio, to a very large portion of the P. R. R. in Trunk Line territory.

Q. Would these grain and grain products rates via the route you have just mentioned cover transit at Hagerstown, Md., without an out-of-route or back-haul charge?

A. Yes.

Q. Describe briefly the destination territory on the [fol. 581] P. R. R. thus accessible without back-haul or out-of-route charge from C. F. A. origins on the N. & W. via N. & W.-Hagerstown-P. R. R.

A. The P. R. R. territory embraced from a destination standpoint is generally the New Jersey, Schuylkill, Philadelphia, and Sunbury divisions; the former Philadelphia, Baltimore & Washington Railroad, the former Northern Central Railroad, the former Cumberland Valley Railroad Maugansville, Md., and north, the Lebanon Branch and the Berwick Branch and the former Delaware Division, which former division embraces territory on the Del-Mar-Va Peninsula from Wilmington, Del., on the north, to Chincoteague, Va., Delmar, Del., and Cambridge, Md., on the south. This is by far the most important part of the peninsula from the standpoint of consumption of animal and poultry feed.

Q. And your map exhibits, Nos. 6 to 9, should be considered in the light of this additional available territory not subject to extra charge for back or out-of-route haul?

A. Yes. This additional territory should be taken into account in the consideration of available territory.

Q. Can you cite another instance of substantial coverage of grain and grain products rates involving a large origin and destination territory via which transit on grain is available at Hagerstown, Md., without out-of-route or back-haul charge?

A. Yes. From a very extensive origin territory on the C. & O. Railway to practically the entire D. L. & W. Railroad.

[fol. 582] Q. Please be specific, what origin stations on the C. & O. are covered?

A. Fort Monroe, Va., to Louisville, Ky.

Q. And to what destination territory on the D. L. & W. Railroad is a route through Hagerstown, Md., effective from the C. & O. origins you have just named?

A. The entire main line of the D. L. & W. Railroad from Bergen Junction, N. J., to East Lancaster, N. Y.

Q. Any other D. L. & W. territory similarly covered?

A. Yes, the territory Chenango Bridge, N. Y., to Utica, N. Y., both inclusive.

Q. In what tariff are the routes provided?

A. In C. & O. I. C. C. No. 11263.

Q. Name a few of the routes effective from and to the territory you have described establishing Hagerstown directly intermediate.

A. C. & O., Waynesboro Union Station, N. & W., Hagerstown Junction, W. M., Shippensburg, Reading Company, Allentown, Central Railroad of New Jersey, Phillipsburg, N. J., D. L. & W. Railroad—C. & O., Durbin, W. M., Shippensburg, Reading Company, Allentown, Central Railroad of New Jersey, Phillipsburg, D. L. & W. Railroad—C. & O., Durbin, W. M., Shippensburg, Reading Company, Rupert, Pa., D. L. & W. Railroad—C. & O., Durbin, W. M., Shippensburg, Reading Company, East Penn Junction, L. V. Railroad, Phillipsburg, D. L. & W. Railroad.

[fol. 583] Q. Is there any inherent advantage from the standpoint of grain transit operations in a location in the eastern portion of Trunk Line territory, rather than farther west in C. F. A. territory or the Western part of Trunk Line territory?

A. Yes, being closer to the market; that is, to the ultimate consignee, the eastern miller is in position to give quicker delivery than his more westerly-located competitor. This is a very important factor.

Q. Anything else accruing to the advantage of an eastern location contrasted to a location farther removed from the Atlantic Seaboard territory?

A. Yes, there is a much wider source of supply of grain and the other commodities entering into the manufacture of mixed feed.

Q. Have you prepared an exhibit covering representative points and movements illustrating your last statement?

A. Yes, No. 54.

Q. Please describe this exhibit briefly.

A. Four representative grain originating points in Ohio have been "followed through" from a rate, transit, and out-of-route or back-haul charge standpoint to four typical eastern destinations, showing the total charges if the grain

were transited at Hagerstown, Md., versus four C. F. A. milling and mixing-in-transit points.

Q. What rates have you shown?

[fol. 584] A. Those on grain products, which would apply to the outbound or transited commodity to the four representative destinations on the exhibit from both the origin point of the grain and the transit point to destination, dependent upon whether settlement is made on the transit point or origin point rate, and also the transit and back-haul or out-of-route charges.

Q. What else?

A. The detail is shown quite fully, and on the first page of the exhibit from the "Total" column for transit at Hagerstown and the C. F. A. transit point it will be observed that in every case the total charge when the transit is performed in C. F. A. is substantially higher than when performed at Hagerstown.

Q. Have you any other comment with particular reference to page 1 of this exhibit?

A. Yes, the charge when transited at Hagerstown is based on the P. R. R. tariff under which a back-haul charge of 4.5 cents per 100 pounds applies. To three of the four destinations there are available routes at present effective under which the Hagerstown complainant can handle grain from the origins shown without such back-haul or out-of-route charge. Thus to three of the four destinations Hagerstown's advantage over the C. F. A. millers is actually 4.5 cents per 100 pounds greater than the exhibit shows.

Q. Now, explain page 2 of this exhibit, bearing in mind that you have just explained the possibility of reducing the [fol. 585] Hagerstown total charge 4.5 cents per 100 pounds to three of the four destinations shown?

A. Page 2 is a summary of page 1, and shows the average distance of the 16 movements to be via Hagerstown 729 miles and via the C. F. A. transit points 749.75 miles, or but 20.75 miles greater on the average when the transit is in C. F. A. than when it is at Hagerstown. Expressed in percentages, the average haul via Hagerstown is 97.36 percent of the average haul when the transit is performed at a C. F. A. point.

Q. What does page 2 of this exhibit show as to increase over and above the line-haul rate from point of origin of the grain to destination of the feed?

A. Taking the rate from origin of the grain to destination of the feed plus the transit charge, which is uniformly one-half cent per 100 pounds, we have Hagerstown paying 4.5 cents over the origin of the grain to the destination of the feed rate plus one-half cent transit charge, and the average excess of the C. F. A. millers over the rate from the origin point of the grain to the destination of the feed plus the one-half cent transit charge is 7.375 cents, or $7\frac{3}{8}$ cents per 100 pounds.

Q. Expressed in percentages, what is the Hagerstown excess charge just described of the C. F. A. average similar excess charge?

A. Hagerstown's charge of 4.5 cents per 100 pounds is [fol. 586] 61.02 percent of the average of the C. F. A. charge of 7.375 cents per 100 pounds.

Q. Have you made any study to develop whether or not the complainant at Hagerstown is actually using grain or grain products in his transit operation at Hagerstown which would not be available to the C. F. A. transit operations, at least on as low a rate basis?

A. Yes.

Q. Will you please describe the study.

A. The settlements on the outbound feed shipments from the complainant's plant at Hagerstown, Md., to destinations on and via the P. R. R. for the six months' period December, 1940, to May, 1941, both inclusive, were analyzed to determine what inbound billing was applied against the outbound mixed feed shipments.

Q. And what did this analysis show?

A. It showed that of 383 outbound cars inbound billing was used in settlement which in 98 cases, of 25.59 percent of the total outbound Hagerstown movement of 383 cars for this six months' period, would not be available to the millers in C. F. A. territory, including those located at the four points shown on this exhibit.

Q. Why could it not be used by C. F. A. millers?

A. In 98 cases the inbound billing covered movement all-rail and rail-lake-rail from Canada via Buffalo or the [fol. 587] Niagara Frontier, from Buffalo arriving at Buffalo via lake, from Buffalo local, or from Erie, Pa., local.

Q. And may I ask why the six months, December, 1940, to May, 1941, both inclusive, were used?

A. Because we were attempting to get ready for a hearing on this case in July, 1941, and at that time the six months'

period, December, 1940, to May, 1941, was the latest six months' period available from our transit settlement records, and for the latest six months' period available our analysis definitely developed that Hagerstown holds a very distinct advantage over its C. F. A. competitors as to sources of inbound grain. This is proven beyond question by the study we undertook and the results which I just gave.

Q. What is the situation with respect to millers located on Trunk Line railroads generally reaching eastern destinations on the P. R. R. under transit performed in Trunk Line territory on other than on the P. R. R.?

A. Generally speaking, it is impossible for them to reach markets on the eastern portion of the P. R. R. at the through rate origin to destination plus the transit charge.

Q. Have you prepared an exhibit illustrating this situation?

A. Yes, Exhibit No. 55, consisting of eight pages.

Q. Will you please explain this exhibit.

A. The exhibit shows the rates which would apply on grain from Chicago, Ill., via various routes to transit points [fol. 588] located in the States of New York, New Jersey, and Pennsylvania on lines other than the P. R. R. and thence outbound in the transited form to points on the P. R. R. Salisbury, Md., Dover, Del., Jamesburg, N. J., and Popes Creek, Md., are typical destinations, and they have been employed in all the cases shown on the exhibit.

Q. Continue.

A. It also shows the basis of rates which would apply, were transit in effect from origin to the P. R. R. destination via the various routes shown on the exhibit.

Q. How many transit points on roads other than the P. R. R. have been used?

A. Twenty-seven instances are shown, although they all do not cover different transit points. To illustrate transit at Waverly, N. Y., has been worked out when performed on the D. L. & W., L. V. Railroad and Erie Railroad.

Four destinations have been used from each of the 27 representative transit points, making a total of 108 illustrations on the exhibit.

These 108 illustrations present a comprehensive picture of the situation when the transit is performed on the Central Railroad of New Jersey, D. L. & W. Railroad, Erie Railroad, L. V. Railroad, Reading Company, and the New York Central Railroad.

Exam. Berry: Does any other railroad except the Penn-
[fol. 589] sylvania service Salisbury, Dover, Jamesburg,
Popes Creek?

The Witness: No, sir. They are local points.

Q. With reference to these 108 illustrations covering Chicago grain transited at points on connecting lines in Trunk Line territory and destined Pennsylvania Railroad points shown in Maryland, Delaware, and New Jersey, how would the charges be settled under the existing arrangements?

A. As the captain of the exhibit shows and as worked out in detail in each of the 108 illustrations, settlement would be on the combination basis.

Q. And would that be materially higher in every case than Hagerstown would pay on Chicago grain to these destinations via Pennsylvania Railroad direct?

A. Yes, sir. Hagerstown would pay the Chicago reshipping rate to destination plus transit charge plus out-of-route or back-haul charge of 4.5 cents. To Salisbury, Md., this would be $31\frac{3}{4}$ cents per 100 pounds versus charges shown on the exhibit for transit at the points shown to Salisbury, Md., ranging from 42 cents to 48 cents per 100 pounds, or from $10\frac{1}{4}$ to $16\frac{1}{4}$ cents per 100 pounds higher than Hagerstown, Md.

Q. Then Hagerstown is much better off in reaching Pennsylvania Railroad eastern points under transit than millers on the Central Railroad of New Jersey, Reading Company, and New York State roads generally on C. F. A. and Western grain?

A. That is correctly stating the present situation.

[fol. 590] **Q.** Would it be possible for the transit points shown on this exhibit to reach the P. R. R. destinations shown on the flat origin-to-destination rate plus the transit charge of one-half cent per 100 pounds if rates were in effect from Chicago to the P. R. R. destination via the routes shown up to the transit points and thence via the junction with the P. R. R. indicated from the transit point?

A. Yes, sir.

Q. But in no case is such a route effective at present?

A. That is correct. There are no such routes in effect. The combination basis applied in every instance.

Q. And naturally you are not advocating the establishment of such routes?

A. Very definitely, I am not.

Q. What is the comparison versus the P. R. R. direct distance Chicago to the four destinations shown?

A. The circuitry over the P. R. R. direct distance ranges from 6.58 percent in the case of transit at Waverly, N. Y., D. L. & W., destination Jamesburg, N. J., to 51.26 percent when the transit would be at Bloomsbury, N. J., Lehigh Valley Railroad on feed destined Popes Creek, Md.

Q. Have you broken the circuitry involved in each of the 108 examples down into percentage blocks using as the comparison the P. R. R. direct distance Chicago to destinations? If so, please state it.

[fol. 591] A. Under 10 percent circuitry, two cases.

Over 10 percent and under 15 percent circuitry, six cases.

Over 15 percent and under 20 percent circuitry, 13 cases.

Over 20 percent and under 25 percent circuitry, 41 cases.

Over 25 percent and under 30 percent circuit, 12 cases.

Over 30 percent and under 35 percent circuitry, 13 cases.

Over 35 percent and under 40 percent circuitry, 12 cases.

Over 40 percent and under 45 percent circuitry, 8 cases.

Over 50 percent circuitry, one case.

Q. Have you made any cumulative comparisons?

A. Yes. Sixty-two illustrative examples or 57.41 percent of the total of 108 shown on the exhibit are 25 percent or less circuitous; 74 of the typical examples, or 68.52 percent of the total of 108 are 30 percent or less circuitous and 87 of the examples shown on the exhibit, or 80.56 percent of the total of 108, are 35 percent or less circuitous as compared to the Pennsylvania Railroad direct distance Chicago to the four destinations.

Q. What is the situation as to P. R. R. millers in the eastern portion of Trunk Line territory reaching points on the New York State lines when C. F. A. or Western grain is used?

A. The situation is the reverse of that covered by Exhibit No. 55 now under discussion.

Q. Can Hagerstown reach the Central Railroad of New Jersey or the Reading Company on the through rate plus [fol. 592] the transit charge from C. F. A.?

A. Yes. There are routes at present in effect under which this is possible.

Q. Have you prepared an exhibit or exhibits illustrating the situation of transit of Chicago grain at P. R. R. transit points destined to points on roads to which Hagerstown now

enjoys the through rate without out-of-route or back-haul charge?

A. Yes, two exhibits. The first, No. 56, deals with other grain transit points on the P. R. R. in close proximity to Hagerstown which are subject to out-of-route or back-haul charges ranging from 3 cents to 6 cents, and averaging 4.5 cents per 100 pounds on Chicago grain destined the Del-Mar-Va Peninsula. The exhibit is self-explanatory, and shows that to the Central Railroad of New Jersey, D. & H. L. I. Railroad, Reading Company, and S. I. R. T. Railway, these three transit points are subject in every instance to an out-of-route charge or the combination basis of rates. Please bear in mind that Hagerstown via present routes can reach all of these destinations on the flat basis without out-of-route or back-haul charge.

Q. Do I understand you to say Hagerstown can get into Long Island at a flat basis even though P. R. R. millers cannot, these located on branches?

A. Yes, sir.

Q. Please describe the second of these exhibits, which will [fol 593] be Exhibit No. 57.

A. Exhibit No. 57 shows the situation if the transit of grain moving via the route of the P. R. R. from Chicago is at Wilmington, Del., under the P. R. R. transit tariff with the destination on roads which Hagerstown can now reach of the flat rate. It will be observed that to points on the Central Railroad of New Jersey and D. & H. Wilmington is subject to the combination basis and to points on the Reading Company Wilmington is subject to either a back-haul or out-of-route charge of 9 cents per 100 pounds, or to the combination rate.

Q. Have you any further comment with respect to Wilmington, Del.?

A. This operation was established at Wilmington for the purpose of serving destinations on the Del-Mar-Va Division of the P. R. R. It will be seen that such a location, while favorable in so far as peninsula destinations are concerned, is offset, in a great part at least, by disadvantages to other destination territories.

Q. Are these exhibits covering transit at Bedford, Green-castle, Littletown, and Wilmington typical of the situation in which a P. R. R. transit operator in Eastern territory

finds himself in attempting to reach destinations on roads to which Hagerstown now has the flat basis?

A. Yes. They illustrate the situation quite generally prevailing.

[fol. 594] Q. What is the present routing from stations on the P. R. R. in C. F. A. territory to destinations on the W. M. Railway Hagerstown, Md., and east thereof? Use Chicago, Ill., as typical of the P. R. R. C. F. A. situation.

A. From Chicago, Ill., P. R. R., and from C. F. A. points on the P. R. R. generally, the junctions between the P. R. R. and Western Maryland Railway to destinations on the latter line Hagerstown, Md., and east are either Fulton Junction, Md., Hagerstown, Md., Cumberland, Md., Hanover, Pa., or Keymar, Md., depending on the particular destination. In some instances two or more optional routes are provided to the same destination, but the five junctions I have just named embrace the points of interchange.

Q. To what destination territory on the W. M., Hagerstown and east, is the route from Chicago, Illinois, Pennsylvania Railroad via P. R. R.-Hagerstown, Md.-W. M. Railway?

A. To stations between Baltimore, Md., and Charlton, Md., both inclusive. This includes the W. M. main line from its eastern terminus in Baltimore to a point slightly west of Hagerstown, Md., and it also includes the W. M. branch to Shippensburg, Pa., but it does not include the W. M. branches in the York, Pa., district.

Q. Would Hagerstown be directly intermediate to these W. M. stations, and would transit be possible without out-of-route or back-haul charge at Hagerstown on C. F. A. [fol. 595] grain originating at P. R. R. points in C. F. A., including Chicago, Ill.?

A. It would be intermediate, but the W. M. transit tariff is restricted so that transit would not apply. The W. M. transit tariff applies only when the traffic is received by the W. M. Railway at Cherry Run or junctions west of Cherry Run.

Q. What is the routing from the eastern portion of the W. M. Railway, say, Hagerstown and east, to P. R. R. points in C. F. A. territory?

A. From the entire W. M. Railway to P. R. R. destinations in C. F. A. territory, using Chicago, Ill., and Rochester, Pa., as typical, the routing is via W. M. Railway-Connellsville, Pa.-P. R. R. W. M. Railway; I. C. C. No. 8598 covers.

Q. So that on traffic between the W. M. and P. R. R. which the W. M. Railway originates the originating line, that is, the W. M. Railway, takes its longest possible haul?

A. Yes, sir.

Q. Do you wish to make any other comment in this connection?

A. Yes. You will observe that on traffic from the W. M. Railway to the C. F. A. portion of the P. R. R. the interchange between the W. M. and P. R. R. is directly between the interested carriers. No "bridge" or third line is interposed between the W. M. and P. R. R., but the interchange is directly between the two involved carriers.

Q. Can you name any other territories between which Hagerstown, Md., is directly intermediate and, hence, open [fol. 596] to grain transit without out-of-route or back-haul charge?

A. Yes. The portion of the P. R. R. in Trunk Line territory—that is, Buffalo, Erie, Oil City, Pittsburgh, and east—on the one hand, and the portion of the N. & W. Railway, generally that portion Kenova, W. Va., and east thereof, on the other, quite generally routes via Hagerstown, Md., in both directions, also points on the Central Railroad of New Jersey, Reading Company, on the one hand, and N. & W., on the other, using Shippensburg, Western Maryland N. & W. route.

Q. Any other territories?

A. Yes. The same situation as I have just described between the P. R. R. and N. & W. quite generally obtains between the N. & W., on the one hand, and the so-called New York State Lines, on the other; that is, routing is directly through Hagerstown, Md.

Exam. Berry: The N. & W. is not a defendant in this case?

Mr. Eshelman: Yes, that is correct.

Exam. Berry: That is my understanding. Is it correct?

Mr. Eshelman: You are correct.

The Witness: That is right.

By Mr. Eshelman:

Q. Will you give a few typical examples.

A. Let us first consider the D. L. & W. Railroad. From and to the N. & W. Railway in Trunk Line territory there are routes through Hagerstown via (1) N. & W.-Hagers-

town, Md.-P. R. R.-Elmira, N. Y., Kearney Junction, N. J., [fol. 597] Manunka Chunk, N. J., Martins Creek, N. J., Northumberland, Pa., Phillipsburg, N. J., etc., as the case may be, thence D. L. & W., or via N. & W.-Hagerstown-W. M.-Shippensburg, Pa.-Reading Company direct to the D. L. & W. at Rupert, Pa., or beyond the Reading Company to the D. L. & W., using the C. R.R. of N. J., or L. V. Railroad as the connecting line between the Reading and Lackawanna. These routes apply in both directions.

Q. What is your next illustration?

A. The Erie Railroad in Trunk Line territory. Routes are published via N. & W.-Hagerstown-P. R. R.-Brookway, Pa., Johnsonburg, Pa., Marion, N. J., Elmira, N. Y., etcetera, and Erie Railroad, and also via N. & W.-Hagerstown, Md.-W. M.-Shippensburg, Pa.-Reading Company, thence Central Railroad of New Jersey, L. & H. Railway to the Erie Railroad. These routes apply both the north and southbound.

Q. Any illustrations to Lehigh Valley?

A. The Lehigh Valley Railroad. Routes are in effect via (1) N. & W.-Hagerstown-P. R. R., Mt. Carmel, Pa., Wilkes-Barre, Pa., Schuylkill Haven, Pa., Stanley, N. Y., Phillipsburg, N. J., etcetera, thence Lehigh Valley Railroad and (2) via N. & W.-Hagerstown-W. M. Railway-Shippensburg, Pa., Reading Company, East Penn Junction, Pa., and thence Lehigh Valley Railroad. These routes apply both north and southbound.

Q. What is the situation showing the New York Central Railroad in Trunk Line territory?

[fol. 598] A. Routes are in effect between the Trunk Line territory portions of the N. & W. and N. Y. C. Railroad via (1) N. & W.-Hagerstown-W. M.-Shippensburg, Pa.-Reading Company-Newberry Junction, Pa., N. Y. C. Railroad; and (2) via N. & W.-Hagerstown-P. R. R.-Canadaigua, N. Y., and Newark, N. Y., Sixtieth Street, New York City, Newberry Junction, Pa., etcetera, thence N. Y. C. Railroad. These routes apply in both directions.

Q. Is this an extensive coverage?

A. The territory open to transit at Hagerstown without out-of-route or back-haul charge is very large and extensive, as I have pointed out here and elsewhere in my testimony.

Q. Between the N. & W., on the one hand, and the D. L. & W., and L. V., and the Trunk Line territory portions of

the N. Y. C. Railroad and Erie Railroad, on the other hand, the routes you have described involve intermediate carriers. Why is not the interchange direct the same as between the P. R. R. and Western Maryland?

A. First, as to the D. L. & W. and L. V. Railroad. Neither of these lines has a physical connection with the N. & W. Railway, and hence the use of an intermediate carrier is essential. We have been discussing the Trunk Line territory portions of the N. Y. C. and Erie Railroad. The only direct connections between these roads and the N. & W. is in C. F. A. territory. The N. & W. and the Erie both reach Cincinnati, Ohio, while the N. & W. and N. Y. C. Railroad [fol. 599] both reach Cincinnati and Columbus, Ohio. There are no physical connections between the N. Y. C. and Erie, on the one hand, and the N. & W., on the other, in Trunk Line territory. Thus to avoid an extremely long haul to and from the C. F. A. junctions of Columbus or Cincinnati, Ohio, the use of an intermediate carrier is necessary.

Q. What is the situation of Hagerstown with respect to traffic between the north and the south?

A. Hagerstown's location places it in a natural intermediate location on practically all movements between the North and the South.

Exam. Berry: Mr. Eshelman, what interest have we got in the traffic between North and South in this case?

Mr. Eshelman: It may be on some of this my order is not as perfect as it should be, but I think that it will show when complete, I think, our situation, that we are interested in showing here, and that we want to have the Commission understand when they approach this is, I want them to understand the Hagerstown situation along with the other. I think that the Commission in making up its mind here as to whether to do this thing, whether to exercise its power, when it determines what is in the public interest, I wanted to know whether it thinks that Hagerstown is picked on, whether it is the orphan, or whether it is in precisely the same situation or in a better situation than eastern lines, [fol. 600] generally. You might say to me that that would have little or no bearing upon the issues, but it seems to me this, if we are correct in our impression, that what the plaintiff asks here, if the Commission grants that, would be an opening wedge; I mean to say the establishment of a

principle which may be applied widely, I would like to have the Commission do it with its eyes open. We can't—

Exam. Berry: Well—

Mr. Eshelman: Excuse me, sir.

Exam. Berry: I venture to say that over 50 percent, if probably not 80 percent of that testimony we have had in here today is put in some far-fetched theory of that character.

Mr. Eshelman: I hope that you won't misjudge us or prejudice us until you hear all of our testimony, and until you read our briefs.

Exam. Berry: Now, we have had any quantity of testimony here about the rates from two points on Norfolk & Western. Norfolk & Western is not interested. Now, you are going into the rates, batch after batch of testimony, with rates dealing with the Norfolk & Western situation. Now, you are going into rates from the North to the South. There is no contention here that Hagerstown hasn't got transit on their rates to other points. It is asking for them on points to the Pennsylvania Railroad, that is the point in issue.

Mr. Eshelman: We thought there was implicit in complainant's case—we thought there was an inference at least [fol. 601] that Hagerstown was one point that did not have, relatively speaking, as much as others. In fact, I think that was the complainant's own testimony.

Exam. Berry: I do not recall—

Mr. Eshelman: We have a right to meet that.

Exam. Berry: I do not recall a scintilla of evidence.

Mr. Hillyer: Let the record show that that is not my position.

Mr. Eshelman: I understand that complainant is not saying that their situation in the East is less advantageous than that of other millers in the East.

Mr. Hillyer: You do not understand us correctly.

Exam. Berry: Go ahead, Mr. Eshelman.

Mr. Eshelman: I think we are through with that.

By Mr. Eshelman:

Q. Will you continue, please, Mr. Thornton.

A. Hagerstown's location places it in a natural intermediate location on practically all movements between the North and the South. In fact, it is recognized as a gateway of major importance on traffic between Trunk Line and

New England territories, on the one hand, and the South, on the other. From the geographical location of Hagerstown its advantage is with respect to movements between the North and the South, rather than on traffic between the East and the West.

Q. Have you prepared an exhibit showing Hagerstown's position on traffic between the East and the West?

[fol. 602] A. Yes. Exhibit No. 58, consisting of two pages of short mileages and routes via such short mileages apply, and two maps illustrating the instances covered by the statement.

Q. Please explain this exhibit briefly.

A. Twenty-six representative destinations in Eastern Trunk Line territory have been used extending from Aberdeen, Md., on the south, to Binghamton, N. Y., on the north, and from New York, N. Y., on the east, to Altoona, Pa., on the west. The short-line working or tariff route mileage and also the short line I. C. C. Docket No. 15879 rate making mileages have been shown.

Q. Will you also explain the maps?

A. The short-line tariff route has been traced by a line of small circles on the map comprising page 3 of this exhibit, and the I. C. C. 15879 rate-making miles have been shown on page 4 of the exhibit.

The maps show that none of the short routes, either tariff or I. C. C. 15879, pass through Hagerstown, Md., and that they do not extend south of the P. R. R. lines. This establishes conclusively that to the large destination territory covered by this exhibit Hagerstown is not on either the actual short line or Docket 15879 rate-making route in a single instance.

Q. Have you any further comment on this exhibit?

A. Yes. The explanation of the notes will disclose that to 20 of the 26 representative destinations—or 76.92 per cent—Hagerstown, Md., now has routes permitting transit without out-of-route or back-haul charge.

Q. Why was Chicago used as the C. F. A. origin point?

A. Because Chicago is not only the country's principal grain market, but also because the entire eastbound grain and grain products adjustment is based on the Chicago to New York rate. Chicago is the key point in the grain adjustment to the East.

Q. How about the other "rate-break" points, Peoria and East St. Louis, Ill.?

A. Exhibit No. 59 covers Peoria and East St. Louis, Ill. I have taken the three most southerly main line points shown on the Chicago exhibit, No. 58, namely, Aberdeen, Md., Wilmington, Del., and York, Pa., and shown the short-line tariff or working route and the Docket 15879 rate-making miles between these three points and East St. Louis, Ill., and Peoria, Ill.

It will be observed that in all cases the short tariff or working route does not make Hagerstown on the direct line and only in the case of Aberdeen, Md., is Hagerstown on the Docket 15879 "theoretical" short line route from or to Peoria and East St. Louis, Ill.

Between Wilmington, Del., and York, Pa., on the one hand, and Peoria and East St. Louis, Ill., on the other, the short-line rate-making Docket 15879 route figures over the P. R. R., whose main line is considerably north of Hagerstown.

Q. Is York on any road other than the P. R. R.?
[fol. 604] A. Yes. On two other roads, the Maryland and Pennsylvania Railroad and the Western Maryland Railway. However, neither of these roads figures in the short-line tariff or Docket 15879 rate making route between York, Pa., and Chicago, Peoria, and East St. Louis. The route between York and all three C. F. A. grain rate-break points is over the P. R. R., in so far as the eastern or Trunk Line territory portion of the haul is concerned.

Q. Is the P. R. R. a party to any presently effective tariff naming class or commodity rates from C. F. A. or Western Trunk Line territory to points on its line using the W. M. as an intermediate or "bridge" carrier?

A. With one minor and very unimportant exception, no.

Q. What is that exception?

A. To the branch extending 39 miles east of Watson-town, Pa., from McEwensville, Pa., to Berwick, Pa., the B. & O. Railroad eastbound billing book, I. C. C. A-4, carries the Central States Dispatch route via B. & O. Railroad-Cherry Run-W. M.-Shippensburg-Reading Company-Paper Mill-P. R. R.

Q. What is the reason for the existence of the Central States Dispatch route to this branch?

A. It was formerly an independent railroad and, as such, made its own routing arrangements. When it was con-

solidated with the P. R. R. those arrangements were, of necessity, adopted by the P. R. R. This branch is the [fol. 605] former Susquehanna, Bloomsburg & Berwick Railroad.

Q. Would this route be established today if it were not already in effect?

A. It would not.

Q. In the study made covering circuitous routes, was this particular situation considered?

A. Yes. The P. R. R. suggested the cancellation of this Paper Mill route to points on its Berwick Branch when the question was under consideration in 1933. However, due to failure to receive the concurrence of one of the interested lines, this action was not possible.

Q. Is the Berwick Branch an important consuming territory in so far as grain and grain products are concerned?

A. No, it is not.

Q. What is the situation generally, omitting this one exception?

A. The P. R. R. has direct connection with all of the C. F. A. lines and employs those connections. It does not join in routes of the character sought in the complaint.

Q. Would opening the desired eastern destination territory on the P. R. R. as sought by this complaint be a departure from the present tariff and routing situation?

A. It most assuredly would. The obvious reason for the sought routes is the elimination of a back-haul charge in [fol. 606] connection with transit at Hagerstown. This should not be controlling, and is not a sufficient reason to depart from the established direct interchange practice.

Q. Is the revenue derived by the P. R. R. from the back-haul or out-of-route charges on grain and grain products handled under transit substantial?

A. It is.

Q. Have you any figures which would indicate the amount of this particular revenue to the P. R. R.?

A. I have.

Q. Just what do they cover and for what period was the study undertaken?

A. The figures cover out-of-route or back-haul revenue on grain and grain products handled under transit at points on the P. R. R. lines east of Pittsburgh, Erie, and Oil City,

Pa., for the six months period December, 1940, to May, 1941, both months inclusive, in accordance with P. R. R. tariffs I. C. C. No. 2220 and I. C. C. No. 2442.

Q. Do the figures cover the transit charge itself?

A. No, only back-haul or out-of-route revenue. The revenue under the transit charge of one-half cent per 100 pounds would be additional.

Q. For the six months' period in question, how many cars of grain and grain products handled under transit in accordance with the provision of P. R. R. tariffs I. C. C. [fol. 607] No. 2220 and I. C. C. No. 2442 were subject to the back-haul charges shown in those tariffs?

A. 1,421 cars computed on the "outbound" or forwarded from transit point basis.

Q. What was the out-of-route or back-haul revenue on these 1,421 outbound cars?

A. \$16,806.05, or approximately \$34,000 per annum.

Q. Have you any data as to the movement of grain products via the defendant P. R. R. to and from Hagerstown for account of complainant?

A. Yes, for the years 1938, 1939, and 1940, and for the first seven months of 1941, both inbound and outbound. Exhibit No. 60 covers.

Q. What does it show?

A. That the complainant's business via the Pennsylvania Railroad showed a substantial increase each year over the preceding year.

Q. What else?

A. That not only as to the annual basis has the increase been steady and substantial, but that for the first six months of 1941 the traffic has been much heavier than for the corresponding six months' periods of the three preceding years and, here again, the increase has been marked 1940 and 1941 over the same period of the preceding years.

Q. What conclusion do you draw from this showing?

[fol. 608] A. That the present rate adjustment including the routes is one under which the complainant is showing substantial increases in his business, and that the existing rate adjustment is, therefore, one under which an increase of business is not only possible, but has actually taken place.

Q. Have you any further comments on this exhibit?

A. Only to direct particular attention to the percentage comparisons shown at the bottom of the sheet, which are self-explanatory.

Q. Do the Trunk Line rail carriers publish tariffs covering diversion and reconsignment of carload freight?

A. Yes. The arrangements are somewhat different as between (1) fresh or green fruits or vegetables, berries, melons, etcetera, or the commodities generally considered as being embraced by the term "perishable," and (2) dead freight, the tariff governing which includes the rules and charges applicable to grain and grain products.

Q. Will you first discuss the perishable situation? What P.R.R. tariff or tariffs cover in Trunk Line territory?

A. P.R.R. I.C.C. No. 2041, when the traffic originates in the South, P.R.R. I.C.C. No. 2222, when the traffic moves from the West, and P.R.R. I. C.C. No. 2391, covering local or Official territory movement.

Q. Do all of these tariffs contain a back-haul or out-of-route scale?

[fol. 609] A. Yes, an identical back-haul or out-of-route scale when the diversion is performed at a P.R.R. Trunk Line territory.

Q. And what is this scale carried in the three P.R.R. tariffs you have named?

A. 30 miles and under, $2\frac{3}{4}$ per 100 pounds.

60 and over 30, $4\frac{1}{2}$ per 100 pounds.

100 and over 60, 6 per 100 pounds.

150 and over 100, $7\frac{1}{2}$ per 100 pounds.

200 and over 150, 9 per 100 pounds.

300 and over 200, 12 per 100 pounds.

400 and over 300, 13 per 100 pounds.

500 and over 400, 14 per 100 pounds.

600 and over 500, 16 per 100 pounds.

700 and over 600, 18 per 100 pounds.

Q. Were these back-haul charges sanctioned by the Interstate Commerce Commission?

A. Yes. In Docket No. 10173, Diversion and Reconsignment Rules, 58 I.C.C. 568, decided August 5, 1920, the Commission found that the back-haul charges were justified, except in cases in which the through rate from point of origin to final destination applied via the reconsignment point.

Q. I think you have stated the usual back-haul involved on a movement from the West, say west of Harrisburg, Pa., to the East, say east of Steelton, Pa., is 149 miles when [fol. 610] the movement is via Hagerstown, Md., over the P.R.R. If this is correct, what is the extra charge for diversion of reconsignment of a carload shipment of perishable freight on such a movement through Hagerstown, Md.?

A. The figure you have stated of 149 miles is correct. The charge under the three tariffs mentioned covering perishable diversion and reconsignment is 7.5 per 100 pounds, or 3 cents in excess of the Hagerstown back-haul charge on transit traffic.

Q. You say there is a separate tariff covering diversions of what is termed "dead" freight?

A. Yes, P.R.R. I.C.C. No. 2040, applicable at P.R.R. points in Trunk Line territory.

Q. Does this tariff, P.R.R. I.C.C. No. 2040, contain an out-of-route or back-haul scale similar to the three tariffs covering perishable freight?

A. No. It contains no such back-haul or out-of-route scale.

Q. Then if a shipment of dead freight, that is, a carload shipment, is diverted or reconsigned when out of route between origin and destination, how are the charges settled?

A. The line haul rate is on combination in and out of the diversion or reconsignment point.

Q. And this tariff, P.R.R. I. C. C. No. 2040, applies for diversion and reconsignment of grain and grain products?

A. It does.

[fol. 611] Q. Has the rule in the diversion and reconsignment tariff providing for the combination of rates into and out of the diversion or reconsignment point, if a back-haul or out-of-route haul is involved, been considered by the Interstate Commerce Commission?

A. Yes.

The combination basis was upheld in Docket No. 10173, 58 I.C.C. 568, decided August 5, 1920; I. & S. Docket No. 1250, 61 I.C.C. 385, decided April 18, 1921; Docket No. 13237, 74 I.C.C. 352, and Docket No. 14762, 91 I.C.C. 615, decided July 24, 1924.

Q. Will you please cite any arrangement you regard as comparable involving the back-haul or out-of-route charge principle?

A. That covered by item No. 350 of P.R.R. tariff I.C.C. 2175, which covers charge for back-haul or out-of-route haul on fresh dressed meats, packing house products and provisions, in carloads, when stopped in transit to permit partial unloading.

Q. If a car of any or all of these commodities shipped from Chicago, Ill., to New York, N. Y., were stopped at Hagerstown, Md., for partial unloading, what would the charge be for the service under the tariff you mentioned?

A. First, a charge of \$6.93 per car for the stop-off in accordance with Item 335-B, Supplement No. 26 to P.R.R. I.C.C. No. 2175. This covers only the service of stopping [fol. 612] in transit. Then the out-of-route or back-haul charge would be computed under Item No. 350, which states "When a shipment is stopped at a point located on the Pennsylvania Railroad not on the direct line from original point of shipment to final destination, and an additional haul is necessary, a charge of \$6.93 per car will be made for each 30 miles or fraction thereof, to and from points where car is handled out of route, in addition to the stop-off charge. Miles to be computed in accordance with tariff I. C. C. 398."

Q. What would the out-of-route mileage be from Chicago, Ill., to New York City when stop-off to partially unload is made at Hagerstown, Md.?

A. 149 miles, which would be five 30-mile blocks as provided in the tariff rule, producing out-of-route charge of \$6.93 for each of the five 30-mile blocks, or out-of-route charge of \$34.65 per car.

Q. And the stop-off charge of \$6.93 per car would be in addition to the back-haul charge of \$34.65?

A. Producing a total of \$41.58 per car for this service.

Q. Is there a recognized back-haul or out-of-route scale of charges applied on lumber and forest products in Trunk Line and C. F. A. territories?

A. Yes. Exhibit No. 61 covers the C. F. A. scale, and Exhibit No. 62 covers the Trunk Line scale.

Q. I observe you show a P. R. R. tariff as authority for [fol. 613] these charges on both exhibits. How about the other C. F. A. and Trunk Line rail carriers?

A. They all publish mileage scales—that is, in Trunk Line and in C. F. A. territories all of the lines apply mileage scales for out-of-route or back hauls on lumber accorded transit.

Q. What is the charge for 149 miles under the C. F. A. scale?

Exam. Berry: Can't we determine all that instead of putting that in every time; that is half a dozen times you said that, compared that with these other scales.

Mr. Eshelman: I do not think we have an exhibit on this.

Exam. Berry: No, no. I am not talking about your exhibits. After he puts the scale in, he tells about the scales each time; he compares it with the other for 149 miles.

Mr. Eshelman: I am perfectly willing he chop that off, if he can do it.

Mr. Hillyer: He just read an exhibit into the record here.

Mr. Eshelman: I think that is not this one.

Mr. Hillyer: What is the use of putting in an exhibit if you are going to read it into the record.

Exam. Berry: Go ahead.

Mr. Eshelman: May we continue?

By Mr. Eshelman:

Q. What is your answer, please, Mr. Thornton.

A. The C. F. A. lumber out-of-route scale for 149 miles [fol. 614] is 11.5 cents per 100 pounds. The generally applicable charge of 4.5 cents on grain transit at Hagerstown for out-of-route haul of 149 miles is substantially lower than the C. F. A. lumber out-of-route scale for the same distance.

Q. And what is the charge under the lumber out-of-route scale for a haul of 149 miles in Trunk Line territory?

A. 7.5 cents per 100 pounds; likewise substantially higher than the generally applicable charge of 4.5 cents for the out-of-route haul for this distance on grain transited at Hagerstown, Md.

Q. Do the Central Freight Association and Trunk Line Association carriers have tariffs effective providing for the fabrication in transit of iron and steel articles?

A. Yes, they do. P. R. R. I. C. C. No. 2500 is typical of the situation in C. F. A. territory, and P. R. R. I. C. C. No. 2140 and I. C. C. 2457 are typical of the arrangements in Trunk Line Association territory.

Q. Have you prepared an exhibit or exhibits illustrating the application of the iron and steel transit rules?

A. Yes. Exhibit No. 63 covering C. F. A. territory and Exhibit No. 64 covering Trunk Line territory. The applicable tariffs in Trunk Line territory are those shown on Exhibit 64.

Q. What is the general practice in these territories when an out-of-route or back-haul movement is involved in the transit operation on iron and steel articles?

[fol. 615] A. A charge, upon a uniform scale, is generally made for such back-haul or out-of-route movements.

Q. I notice the first entry on the Trunk Line exhibit, No. 64, covers fabrication in transit at Hagerstown, Md. Is the concern at Hagerstown now in active operation and availing itself of the privileges under P. R. R. tariff I. C. C. No. 2140?

A. Yes.

Q. Is there any other transit operation now active at Hagerstown, Md.? By that I mean transit operation other than milling of grain, feed-mixing, or fabrication in transit of iron and steel articles?

A. Yes. At present treating-in-transit and creosoting-in-transit of lumber under transit tariffs of the Hagerstown, Md., lines is being performed by a concern located at Hagerstown, Md.

Q. Is this lumber-treating firm located on the P. R. R. rails at Hagerstown, Md.?

A. No. It is located on the W. M. Railway.

Q. What is the situation with respect to absorption of switching?

A. The P. R. R. does not provide for the absorption of W. M. switching on this lumber transit operation and, hence, the W. M. switching charges of \$6.93 per car both inbound and outbound would be in addition to the line-haul rate, the transit charge of \$6.93 per car when destined to Official [fol. 616] territory, and $2\frac{3}{4}$ cents per 100 pounds, minimum \$9.90 per car, when destined to points in Southern territory or Southwestern territory, and the back-haul charge, if a back-haul or out-of-route movement is involved.

Q. Are you familiar with the Flory Milling Company case, Docket No. 13919, 93 I. C. C. 129, decided October 14, 1924?

A. Our company was not a party defendant, but I have carefully analyzed the Commission's decision in this case.

Q. Will you please discuss the Flory Milling case with relation to the pending complaint Docket No. 28647? By

that I mean develop the parallel and dissimilar points in the two cases.

A. Let me say to start my explanation that the complainant at Hagerstown, Md., has through routes and joint rates without out-of-route or back-haul charge for transit at Hagerstown, Md., to the entire destination territory sought in the Flory Milling Company case.

Q. What was the first route sought in that case, and to what destination territory was it sought?

A. The Erie Railroad to Goshen, N. Y., thence L. & N. E. through Bangor, Pa., for transit at Bangor, to the Reading Company at Catasauqua and to the C. R. R. of N. J. at Bethlehem to destinations in southeastern Pennsylvania on the Reading and in southern New Jersey on the C. R. R. of N. J.

Q. What did the Commission determine as to this route? [fol. 617] A. That Goshen, N. Y., was a New York rate point, while much of the destination territory was subject to Philadelphia rates and that, therefore, unwarranted fourth section departures would result. The Commission declined to prescribe this sought route.

Q. Describe the second route.

A. Via the D. L. & W. and its western connections to Bangor, Pa., thence L. & N. E. to Catasauqua, Pa., for Reading Company points and to Bethlehem, Pa., and C. R. R. of N. J. points in southeastern Pennsylvania and southern New Jersey.

Q. What was the conclusion as to that route?

A. That as the then present routes involved the D. L. & W.-C. R. R. of N. J. and Reading Company and that as "the same number of carriers would participate as when the C. R. R. of N. J. and the Philadelphia & Reading haul the traffic from Taylor," the same number of carriers would participate as via the then present routes. This route was granted.

Q. Compare what was granted via this route with what is sought in the instant case.

A. The route which was granted comprised the same number of carriers as the effective route at the time of the decision or, in other words, no additional carriers were added in so far as numbers go. The routes of the B. & O. and P. R. R. are single-line routes, involving but one carrier, while the sought routes in Docket No. 28647 comprises [fol. 618] a minimum of three-line haul carriers to five or

more line-haul carriers. Thus the situation is not the same, and the condition that influenced granting of the sought route No. 2 in Docket No. 13919 is not present in the instant complaint.

Q. What was route No. 3?

A. Route No. 3 there sought consisted of the L. V. Railroad and its western connections to Lizard Creek Junction, Pa., thence L. & N. E. Railroad through Bangor, Pa., to Campbell Hall, N. Y., for connection with the New England lines, and also from Bangor via D. L. & W. to New York rate points, including the Long Island Railroad.

Q. What was the conclusion as to this route?

A. That this route would short-haul the L. V. Railroad to New England, New York rate points, and the Long Island Railroad. The Commission declined to grant this sought route No. 3.

Q. Compare this sought route No. 3 with the instant complaint.

A. Exactly the same as the B. & O. Railroad and P. R. R. would be short-hauled.

Q. Please describe the sought route No. 4 in the Flory case.

A. Route No. 4, New York Central to Newberry Junction, Pa., Reading Company to Tamaqua, Pa., L. & N. E. to Bangor, Pa., thence D. L. & W. from Bangor to New York rate points, the Long Island Railroad, and New England.

Q. What did the Commission find as to sought route No. 4 as just described?

[fol. 619] A. After stating that Newberry Junction is not a junction point on New England traffic, the Commission said: "The suggested route would inject the Lehigh & New England as an additional carrier without compensatory advantage of shortened haul."

Q. Was sought route No. 4 in the Flory case granted by the Commission?

A. No. It was not granted.

Q. Compare this route with what is sought in No. 28647.

A. My answer is the same as in connection with sought route No. 2 in the Flory Milling case. In 28647 the sought routes inject not one but always two or more additional line haul carriers.

Q. Describe sought route No. 5 in the Flory case.

A. This was the Central States Dispatch route, i. e. B. & O.-Martinsburg-Cumberland Valley-Shippensburg-Reading Company, Catasauqua, Pa., L. & N. E. Railroad, thence Bangor, Pa., D. L. & W. Railroad to New England, New York rate points, and the Long Island Railroad. Route No. 6 is very similar and one explanation could readily cover both No. 5 and No. 6 in the Flory case.

Q. What was sought route No. 6 in the Flory case?

A. The Blue Ridge Dispatch route, i. e., C. & O., Basic, Va., N. & W., Hagerstown, W. M., Shippensburg, Reading Company, Catasauqua, Pa., L. & N. E. Railroad to Bangor, [fol. 620] Pa., thence D. L. & W. to New York rate points and D. L. & W. and connections to New England and Long Island Railroad points.

Q. What did the Commission find with respect to these sought routes Nos. 5 and 6?

A. To New England the Commission granted them for the reason that the then present Central States dispatch and Blue Ridge dispatch routes applied to New England via Cumberland Valley or Western Maryland, Reading Company, C. R. R. of N. J., and L. & H. R. Railway, and that the sought routes Nos. 5 and 6 would substitute one line; that is, the L. & N. E. Railroad, for two lines, namely, the C. R. R. of N. J. and L. & H. Railway, resulting in a saving of one line-haul carrier in the route. To New York rate points and to the Long Island Railroad the Commission did not find sought routes Nos. 5 and 6 necessary.

Q. Compare the New England situation under these sought routes No. 5 and No. 6 with what is sought in the instant complaint.

A. Sought routes Nos. 5 and 6 in the Flory Milling case resulted in one less line-haul carrier from origin to destination, while what is sought in No. 28647 injects a minimum of two additional line-haul carriers in the movement.

Q. Do your answers constitute a brief but complete resume of the issues in the Flory Milling Company case, Docket No. 13919, 93 I. C. C. 129?

A. Yes, sir. They cover all of the sought routes, all of the desired destination territory, and also give the dis-[fol. 621] position which the Commission made of each point raised.

Exam. Berry: Mr. Eshelman, can't you do that in your brief?

Mr. Eshelman: No, I do not believe I can. I do not know that they are all there shown in the same way that the witness described.

Exam. Berry: All he is telling us is what the routes were in there, and what the Commission has done in the case, and then what the present route is. You got all you did out of the case.

Mr. Eshelman: It might be simpler to have it here than to take the thing out. I thought it might be a little simpler than you would find to pick it out.

Mr. Hillyer: We can pick it out if we want it.

Exam. Berry: You are consuming a lot of time and space here.

Mr. Hillyer: I can pick it out if we want it.

Mr. Eshelman: Well, may I understand, then, that I may include this in my brief, and that if in doing so I am outside of what appears in the record, from any information he got otherwise, that nevertheless this may go?

Exam. Berry: Why, certainly. You can refer to anything that was in the other case and the decision made in it.

Mr. Eshelman: In other words, your statement is entirely from the report; is that right?

[fol. 622] The Witness: Yes, Mr. Eshelman; I thought I was saving time. I made it just as concise as I could.

Mr. Eshelman: I might say I wanted a comparison of some of the things—

Exam. Berry: He has given you that each time. He does not need to read it with every route, do you?

The Witness: I do, yes, Mr. Examiner. That was one point that I wanted to make, the similarities and dissimilarities of the Flory case as against this case, and that is the real reason for analyzing the case, to set them down side by side.

Exam. Berry: What do you mean by "this case"? What routes in this case are compared?

The Witness: Well, we are comparing, Mr. Examiner, where we have one-line route, and where this complainant seeks the minimum of three road-haul carriers up to five or more rate haul carriers, that same principle was involved to a much lesser extent in the Flory case, and that was the comparison I was endeavoring to make, sir.

Mr. Eshelman: Frankly, I always feel a certain measure of embarrassment at looking into the brief, a factual show-

ing of this sort without giving my opponent knowledge of just what I am doing and exactly what I want.

I might say, Mr. Examiner, that all Examiners are perhaps not equally broad minded with yourself in this respect, but, frankly, I shall want to make these comparisons. [fol. 623] Exam. Berry: I see nothing to keep you from referring to what the Commission did in that case. Of course, any facts stated as facts are not proven and would not be evidence in this case of what the Commission did and found; but I do not see any reason for repeating this.

Mr. Eshelman: I should like to reserve the right—

Exam. Berry: You have that right.

Off the record.

(Discussion off the record.)

Exam. Berry: On the record.

Go ahead.

By Mr. Eshelman:

Q. Thus far your testimony and exhibits have dealt with instances in which establishment of routes or charges made in existing routes to fit the rates and routes to transit would short haul the Pennsylvania Railroad. Could routes be established or changes made for the purpose of granting new transit or broadening existing transit arrangements on grain which would have the opposite result—that of increasing the haul of the Pennsylvania Railroad?

A. Certainly.

Q. Will you develop a few examples of such routes, new or changed routes, having for their purpose increased transit privileges which would result in hauls longer than at present obtainable for the P. R. R. Suppose we start with destinations on the B. & O. Railroad.

[fol. 624] A. At present traffic originating on the P. R. R. in C. F. A. territory destined B. & O. Railroad points in Trunk Line territory must be delivered to the B. & O. at junctions west of Pittsburgh, which excludes P. R. R. Trunk Line territory grain transit operators from reaching B. & O. Railroad eastern points. If a route to eastern points on the B. & O. Railroad from Pennsylvania points in C. F. A. were to be established via Hyndman, Pa., such route would open Bedford, Pa., on the P. R. R. to transit at the through rate plus one-half cent transit charge to B. & O.

Railroad points Hyndman, Pa., and east. The B. & O. destination territory thus opened would include Cumberland, Md., and all B. & O. Railroad points east of Cumberland, Md.

Give us another example of increasing the P. R. R. haul at the expense of the B. & O. Railroad?

A. Were a route from P. R. R. points in C. F. A. established to B. & O. Railroad points New York City to Washington, D. C., both inclusive, via Wilmington, Del., that route would open Highspire, Pa., Lancaster, Pa., and Wilmington, Del., to transit for B. & O. Railroad deliveries New York City to Washington, both inclusive, at the through rate origin to destination plus transit charge of one-half cent per 100 pounds.

Q. The routes you mentioned as increasing the P. R. R. haul are not effective today, are they?

[fol. 625] A. They are not in effect at the present time. As I stated, between P. R. R. in C. F. A. territory and B. & O. Railroad in Trunk Line territory the present arrangements call for interchange between the present arrangements of the two roads west of Pittsburgh.

Q. What is the situation as to interchange when the C. F. A. origin is on the B. & O. and Trunk Line destination is located on the P. R. R.

A. In that case the traffic is delivered by the B. & O. to the P. R. R. at a point west of Pittsburgh, Pa. Transit is not available via the route between the P. R. R. and B. & O. on C. F. A. to Trunk Line traffic on business originating on either the P. R. R. or B. & O., on the one hand, and terminating on the other road via Millvale (Willow Grove), Pa., which point is in the Pittsburgh District. In other words, the interchange between the P. R. R. and B. & O. Railroad must be west of Pittsburgh in order to receive transit on the P. R. R. or B. & O. in Trunk Line territory. If any C. F. A. grains is interchanged at Millvale (Willow Grove), Pa., it is not entitled to the transit privilege on either the B. & O. or P. R. R. in Trunk Line territory.

Q. So that the arrangement between the B. & O. Railroad and P. R. R. protects the interests of both companies to the same extent?

A. Yes, sir.

[fol. 626] Q. Please contrast this existing arrangement between the P. R. R. and B. & O. Railroad with what the complainant is here seeking.

A. I shall use an example. A car of grain originates at Hamlet, Ind., on the B. & O. Railroad consigned to Bristol, Pa., on the P. R. R. It would route B. & O. Railroad, Cincinnati, Ohio, P. R. R.—that is, over the B. & O. from Hamlet to Cincinnati and over the P. R. R. from Cincinnati to Bristol, thereby protecting the haul of both participating carriers. Or a car of grain originates at Loganport, Ind., on the P. R. R. destined Hockessin, Del., on the B. & O. Railroad. In this latter case the P. R. R. hauls the car from Loganport, Ind., to Cincinnati and the B. & O. secures the haul from Cincinnati to Hockessin, Del. In this case the route is P. R. R.-Cincinnati, Ohio-B. & O. Railroad.

Q. How does this compare with what is sought in this complaint?

A. The car of grain originating on the B & O. at Hamlet, Ind., would move over the B. & O. to Cherry Run, W. Va., thence W. M. Railway to York, Pa., and thence P. R. R. from York, Pa., to the destination, Bristol, Pa., which, stated differently, is to say that the P. R. R. would be deprived of its long haul from Cincinnati and would secure but a short haul from York. Instead of receiving a haul of 692 miles from Cincinnati, Ohio, to Bristol, Pa., we would receive a [fol. 627] haul of but 116 miles from York, Pa., to Bristol, Pa.

Q. So that under what is sought the P. R. R. would receive a haul of but 116 miles instead of one of 692 miles?

A. Yes, the P. R. R. would be short hauled 576 miles in this case. The haul we would receive under the sought route is but 16.76 per cent of our present haul.

Q. Would the P. R. R. receive any compensating or offsetting gain?

A. None whatever under what is sought in this complaint.

Q. Is your explanation of the arrangements between the P. R. R. and B. & O. Railroad on traffic between Trunk Line and C. F. A. points typical of the general routing arrangements existing between the P. R. R. and the C. F. A. lines?

A. It is.

Q. State what that situation is as to those lines.

A. If the New York Central, the Erie or the Chesapeake & Ohio were substituted for the B. & O. Railroad and a similar example traced through from C. F. A. origin to Trunk Line destination, the result as to short-hauling the P. R. R. without compensating gain otherwise would be identical in number and probably the same in figures, miles and percentages as the B. & O. illustration.

Q. All points—is that all points as well as from points beyond today, are there today in effect routes to the P. R. R. which the complainant can use to draw grain except [fol. 628] he has the back-haul charge?

A. Yes, sir. He has a very full and complete coverage.

Q. Now, let us explore the possibilities of the P. R. R. securing a longer haul and transit operators on its lines more territory of destination on the C. R. R. of N. J.?

A. The present arrangements from P. R. R. points in C. F. A. to all points on the C. R. R. of N. J. provide interchange between the P. R. R. and C. R. R. of N. J. at Nanticoke, Pa. Just to mention one instance that is possible, if a route via P. R. R. Phillipsburg, N. J., and C. R. R. of N. J. were established from P. R. R. points in C. F. A. territory to C. R. R. of N. J. points Newark and Jersey City, N. J., on the east to Mauch Chunk, Pa., on the west, the P. R. R. haul would be materially increased and the miller on the P. R. R. at Philadelphia, Pa., would benefit by securing a considerable additional destination territory not now available to him.

Q. Does traffic destined points on the D. L. & W. Railroad present similar possibilities?

A. Yes. The general arrangement from P. R. R. points in C. F. A. territory to D. L. & W. Railroad stations provides for interchange at Buffalo, N. Y. Were the interchange points made Elmira, N. Y., Manunka Chunk, or Kearny Junction, N. J., the P. R. R. haul would be increased and millers on our line would secure a large additional destination territory on the D. L. & W. at the through rate plus transit charge of one-half cent per 100 pounds, [fol. 629] as against their present charges on combination basis.

Q. Now, let us consider points in Trunk Line territory on the Erie Railroad.

A. From P. R. R. points in C. F. A. to destinations on the Erie Railroad in Trunk Line territory the routing re-

quirements provide for interchange between the P. R. R. and Erie Railroad at Transfer, Pa., or junctions west of Transfer, Pa. Were routes established via P. R. R., Elmira, N. Y., or Marion (Croxtton), N. J., the P. R. R.'s haul would be increased and transit operators on the P. R. R. would greatly benefit by reaching on the flat basis plus one-half cent transit charge territory to which they now have to pay combination of locals.

Q. Would that same condition hold true as to the Lehigh Valley Railroad?

A. Yes. The existing routing arrangements generally provide interchange between the P. R. R. and Lehigh Valley Railroad at Buffalo, N. Y. If routes from P. R. R. points in C. F. A. territory were established to Lehigh Valley Railroad destinations via such junctions as Elmira, N. Y., Wilkes-Barre and Mt. Carmel, Pa., Phillipsburg and Oak Island Junction, N. J., the P. R. R. haul would be greatly increased and transit operators on its line benefited.

Exam. Berry: Now, in all those instances in which you [fol. 630] say that transit perhaps would be benefited if you had these other routes in there, but the railroad practices prohibit them from putting them in, wouldn't it be in the interest of the shipping public to order them in if we had a complaint?

The Witness: I don't think so, Mr. Examiner.

Exam. Berry: Are you stating it is going to benefit—it is going to benefit all these people if you had them?

Mr. Eshelman: Excuse me. I did not quite catch that. I do not mean to interrupt.

Exam. Berry: Each time you made it that it would benefit those except what transit prohibited?

The Witness: It will benefit the Lancaster man. It will put him in against Waverly, N. Y.

Exam. Berry: Wouldn't that be in the interest of the public to put those routes in?

The Witness: No, sir; I do not see it, Mr. Examiner. When you consider that if Lancaster gets into Waverly, N. Y., Waverly, N. Y., is going to make a desperate effort to get into Lancaster.

Exam. Berry: Haven't they a right to do that?

The Witness: Certainly. The result is cross-hauling of carriers, uneconomic transportation, where we have a rec-

ognized system of transportation serving the needs of the public, public need and convenience.

Exam. Berry: Is it your idea it is of benefit to the public [fol. 631] to lie with the railroad to restrict the destination territory served by it to operators on its own railroad?

The Witness: No, sir. It is my idea it is in the public interest for the railroad to restrict the origin and destination territory to points over reasonably direct routes involving as few carriers as possible; that the use of five carriers where one carrier can do the job is uneconomical and not in the public interest. That is definitely by position, Mr. Examiner.

Mr. Eshelman: And, by the way, I might put a question to the witness; it deals with one of the questions of the Examiner.

By Mr. Eshelman:

Q. Is it a fact that destinations on the P. R. R. are not restricted to origins on the P. R. R.; I mean to say, isn't it a fact that the grain originating on any line in C. F. A., practically any line in C. F. A., any point in C. F. A., can reach the P. R. R. in the East; I mean to say, the routes are open by established junctions; is that not true?

A. By established junctions; yes, sir.

Mr. Eshelman: I do not think it ought to be assumed, Mr. Examiner, a place is restricted so a man cannot possibly move.

Exam. Berry: I understood the testimony to be that in the Eastern territory you did not permit transit except on the direct line of the Pennsylvania Railroad on the through rate, but if it was west of Pittsburgh you would [fol. 632] permit the transit.

Mr. Eshelman: Well, for illustration, for instance, others might transit it on the New York Central, or on the Wabash, or on the B. & O. at a point in the West, and as soon as it came to us at an established junction that could then come into the East and receive the transit again on our line, and the same way if——

Exam. Berry: But if it originated——

Mr. Eshelman: If it originates on our line, goes to them at their established transit it can also receive transit in the East, as I understand.

Exam. Berry: But if it originates in Eastern Trunk Line territory on some line other than the Pennsylvania it cannot move to the destination from a transit point on that line to destination on the Pennsylvania; is that not true?

Mr. Eshelman: It can in some cases, as I think he has indicated. But, generally speaking, I think as the witness has stated there is the effort to avoid the cross-hauling and to hold things to the established interchanges.

Exam. Berry: Go ahead.

By Mr. Eshelman:

Q. Have you covered the arrangements—Please discuss the situation with relation to P. R. R. origin territory in C. F. A. to Reading Company destinations.

A. The present routing arrangements provide for interchange between the P. R. R. and Reading Company at [fol. 633] Harrisburg, Pa. if in addition to this route via Harrisburg, Pa., the rates were made also to apply via Belmont, Pa., which is located within the Philadelphia, Pa., city limits, the P. R. R. haul would be increased 106 miles from Harrisburg to Philadelphia, and the millers on the P. R. R. at Highspire, Lancaster, and Philadelphia, Pa., greatly benefited by being enabled to reach Reading Company points at the through rate from origin to destination plus transit charge of one-half cent per 100 pounds, as against the present general application of the milling point combination.

Q. I think you had just one more illustration, that is to destinations. What are the possibilities as to destinations on the Western Maryland Railway?

A. The rearrangement of routes from C. F. A. points on the P. R. R. to destinations on the W. M. by available interchanges between Cumberland, Md., on the west, to Fulton Junction, Baltimore, Md., on the east, would in many, many cases result in the P. R. R. securing a longer haul, and would also present manifold possibilities of P. R. R. transit operators from Bedford, Pa., on the west, to Baltimore, Md., on the east, increasing their markets.

Q. Have you prepared an exhibit illustrating these situations?

A. Yes. Exhibit No. 65, which is a self-explanatory diagram of two typical instances of this nature.

[fol. 634] Q. Are the possible routes, resulting in longer hauls for the P. R. R. and larger marketing territories for millers located on its line, just as logical as the routes the complainant is seeking over lines west of the W. M. to Hagerstown, thence over the W. M. to the P. R. R. via Fulton Junction or York?

A. The possible routes I have just enumerated starting with the B. & O. and concluding with the W. M. are more logical than those being sought in the instant complaint.

Q. Why do you say that?

A. Because they are all reasonably direct routes involving very little, if any, circuitry over the existing routes.

Q. Have you any other reason for your statement that the routes you give as presenting possibilities of increased haul for the P. R. R. are more logical than those sought in the instant complaint?

A. Yes. The number of roads comprising the routes would be fewer.

The shortest routes from the mileage standpoint sought, taking Chicago as a typical origin and Philadelphia as a typical destination, involve at least three road haul carriers and in most cases four or five road haul carriers. Of course, as the number of road haul carriers increases the number of interchanges between road haul carriers becomes correspondingly greater.

Q. You referred to the shortest sought routes from Chicago [fol. 635] to Philadelphia as involving three to five road-haul carriers. Please state the details of the routes you have in mind.

A. That comprising three-road haul carriers is: B. & O., Chicago, to Cherry Run, W. Va.; Western Maryland to Newark, Fulton Junction or Hagerstown and P. R. R. from York, Fulton Junction, or Hagerstown to Philadelphia. That involving four carriers is N. Y. C. Railroad, Chicago to Youngstown, Ohio, P. & L. E. Railroad, Youngstown, Ohio, to Connellsville, Pa.; W. M. Connellsville, Pa., to Hagerstown, York, or Fulton Junction and thence P. R. R. That involving five-road haul carriers is Wabash to Toledo, Ohio, W. & L. E. to Pittsburgh Junction, Ohio, P. & W. Va. to Connellsville, Pa., W. M. to Hagerstown, York, or Fulton Junction, and thence P. R. R.

Q. Am I to understand that you are advocating the establishment of the routes you have mentioned as increas-

ing the P. R. R. haul and aiding millers located on its line to reach territory on connecting lines not now available to them except on a combination basis?

A. No. Under present conditions I am not advocating the establishment of the routes I have indicated as increasing the P. R. R. haul and aiding transit operators on its line.

Exam. Berry: What do you mean by present conditions?

The Witness: Operating and traffic conditions as they are now, Mr. Examiner.

Exam. Berry: Do you mean because of the agreements [fol. 636] among the carriers, as the exchange points?

The Witness: No, sir; not just—let's see if I get that point straight. In that that protects the haul of each carrier and keeps the interchange in the movement and the normal flow of traffic orderly, in well recognized routes, if that is what you mean, the answer is definitely yes.

Exam. Berry: I do not quite get what you mean by orderly, well-defined routes. Isn't any available practical route that is of benefit to the public an orderly well-defined route?

The Witness: No, sir.

Exam. Berry: It is not? Well, what do you mean by this?

The Witness: I mean routes sought in this complaint are not orderly, well defined.

By Mr. Eshelman:

Q. It is not because they are sought that they are not?

A. No. It is because of their position, the fact that in many cases they increase mileage, and in every case they increase the number of road haul carriers and interchange.

Mr. Eshelman: I might say my other witness may be able to contribute something on that.

Exam. Berry: All right.

The Witness: Off the record a minute.

Mr. Eshelman: That is up to the Examiner.

The Witness: If I may say something off the record, Mr. Examiner?

[fol. 637] Exam. Berry: Off the record.

(Discussion off the record.)

Exam. Berry: On the record.

By Mr. Eshelman:

Q. With respect to present conditions, will you just continue. Does your testimony have something that might explain what you mean by the present conditions?

A. No.

Q. Just continue, where you say the existing situation has been developing.

A. The existing situation has been developed over a long period of years by the carriers, with the cooperation of the shippers, and I am not now suggesting that to secure an advantage to the carrier I represent this situation be changed. Of course, if new routes shorthauling the P. R. R. are to be established, I am naturally interested in seeing that other routes be made effective which will increase our haul and serve as an offset to any such short-haul routes.

Q. What has been the attitude of the carriers generally for the past several years, say, since 1933, with reference to routing generally?

A. The effort, which has borne considerable result, has been toward the elimination and restriction of circuitous and unnecessary routes.

Q. That is, generally within Official territory?

A. Yes, sir.

[fol. 638] Q. What would the result of the establishment of the sought routes be, especially if followed to the logical conclusion, including the establishment of routes such as you have cited as increasing the P. R. R. haul?

A. As I previously stated, the routes I mentioned which would increase our haul are relatively direct and involve but two carriers. However, if routes are to be established to accord a transit operator entrance into new territories on the flat basis of rates by establishing the transit point directly intermediate, the result could only be a complete reversal of the present trend, and a departure from sound traffic and transportation principles.

Q. What do you mean by that?

A. That the present effort is to maintain order in the routing picture, while the principle here sought of making transit the controlling factor, even to the extent of establishing routes not now in existence, to the exclusion of all other factors, not only subordinate the rate structure and the routes via which it applies to the accessorial service of

transit, but changes the existing trend from order into chaos.

The inevitable result of such a policy would be to deplete the carriers' revenues through the increase in expense of operation, which would necessarily follow cross-hauling, without any real improvement in the competitive situation of millers generally, since what they would gain in one [fol. 639] quarter would be lost to them in another.

Q. Mr. Thornton, throughout your testimony and exhibits, also in the exhibits introduced by witnesses Heimert and Beggs, there have been shown a large number of routes from points in Central territory, both on the P. R. R. and on other roads, to destinations on the P. R. R. in the East on which Hagerstown has transit, although at a back-haul charge in many instances. These same routes also would apply direct to the destination where the shipments were not transited at Hagerstown, would they not?

A. That is correct. They would.

Q. Do you think there are enough routes to meet the demands and needs of shippers and of commerce, considering specifically the interests of the shippers at the points of origin and the receivers at points of destination of these routes?

Exam. Berry: And the interest of the complainant?

Mr. Eshelman: No. I am not including for the purpose of this question the interest of the complainant. I am asking him first, do you think that considering now these shippers at points of origin, for instance, in C. F. A. territory, and receivers at destinations in Trunk Line territory on the Pennsylvania, that there are sufficient routes to meet the demands and needs of commerce.

The Witness: I do. There is at present at least one and generally two or more open routes from every point in [fol. 640] C. F. A. and W. T. L. territories to every destination on the lines of the P. R. R. in Trunk Line territory. Where the P. R. R. is not the origin line, routes are available with direct interchange to the P. R. R. If an originating point is served by more than one carrier, there are routes via each of the originating carriers to the P. R. R. destinations in the East. I might further say that in the majority of cases there is more than one route from both common and local points on any line to P. R. R. eastern destinations. To illustrate, our routes with the New York

Central Lines apply via such junction points as Columbus or Erie or Buffalo, so that in many instances from a common or a local point on the N. Y. C. in C. F. A., as illustrative, to a destination on the P. R. R. in the East there are two or more open routes.

Q. Are these routes to which you refer good working routes, well established and subject to divisional agreements?

A. They are.

Q. Generally speaking, were all these routes voluntarily established so that the participating carriers necessarily had opportunity to select junctions permitting the best and most efficient physical operation?

A. That is true. In virtually all instances these routes are the result of voluntary negotiations between the involved carriers, and were made taking into account the best and most efficient operation in the light of conditions [fol. 641] and traffic of the participating lines. As I have previously stated, such routes are generally on a reciprocal basis.

Q. Generally speaking, how do the sought routes compare with the existing routes in the number of carriers which would be involved?

A. Except as between the P. R. R., on the one hand, and the B. & O. Railroad, on the other, where a minimum of one additional carrier would be involved, the sought routes would always involve a minimum of two additional carriers, and frequently more. In many cases, in addition to the interjection of these additional unnecessary carriers, the mileage would be substantially increased over and above that of the existing direct routes.

Q. To the extent that these sought routes by greater mileage or greater number of participating carriers and interchanges would involve a greater physical service than under existing routes, what would be the general effect of the prescription of such routes upon railroad transportation?

A. One very obvious result would be increased expense to the participating carriers for the performance of a transportation service. The natural result of this condition is less efficient and more expensive service to the public at large. I have been very closely associated with traffic work for over 25 years, the last 21 of which have been

directly in rate constructions and commerce work, and [fol. 642] I can say from my own knowledge that it has never been the policy of the Trunk Line carriers generally, or of the P. R. R. in particular, to join in routes which interject an intermediate carrier between it and another carrier in instances in which direct connections exist between it and such other carrier. To my own personal knowledge the only exceptions have been under the duress of meeting fourth section requirements, and these instances have been very few and far between. Of course, in these cases the interjection of an intermediate carrier in the route resulted in a very material decrease in the mileage from origin to destination, and this would not result under the sought routes.

Exam. Berry: 148 miles, wouldn't it be shorter?

The Witness: No, sir. We must consider, Mr. Examiner, that the short route, Chicago to Salisbury, Md., as I recall it is 902 miles. Now, the mere fact Mr. Stickell chooses to take that down to Hagerstown and transit it does not make use responsible. Our short line is the short line of any of the railroads, and it is there for the public to use. Now, as to whether—

Exam. Berry: Do you think it is more economical and more efficient for you to haul 148 miles out of line than it would be to join in the rate and take it on the direct route?

The Witness: I do, sir, because we get $4\frac{1}{2}$ cents a hundred pounds for that 149-mile haul.

Exam. Berry: You are not considering the shipper, then, [fol. 643] from an economic standpoint. You are only considering the carrier's interest.

The Witness: Well, I don't know, Mr. Examiner.

Mr. Eshelman: Well, if you want the answer I want the witness to give it. I do not want him arguing with you. I think there is a legal point there I would like to argue with you at the appropriate time. I do not know that we will get anywhere.

Exam. Berry: I just want these broad statements—

Mr. Eshelman: I thought there might be a misunderstanding in what he was saying at this time; he was talking about our direct routes, not via Hagerstown. I was going to ask him about that. May I ask him to conclude that on the last page?

The Witness: Further, it has not been the policy of the Trunk Line carriers in general, or the P. R. R. in particular, to establish through routes and joint rates as incidents to transit, but transit has always been treated as an incident to an existing through route and joint rate.

Q. Do you regard the policy to which you have referred as in full harmony with sound traffic principles and economic transportation?

A. That is my considered opinion.

Q. Now, take that, if you will, which will be the same route you described except for the back-haul, Hagerstown, leaving out of mind for the minute the fact that is at a [fol. 644] back-haul, and is at an extra charge, what is your conclusion or opinion as to the sufficiency and adequacy of those routes from a transportation standpoint?

A. They are fully adequate and sufficient.

Q. And are good operating routes—I mean to say that if—

Mr. Hillyer: Of course, Mr. Examiner, he is not asking for facts now; he is just asking for this man's opinion for what it is worth.

Mr. Eshelman: Well, I shall have some other testimony.

Mr. Hillyer: He cannot support that with any facts he has.

By Mr. Eshelman:

Q. Let me ask you this: Would the complainant be willing to say if the back-haul charge were not there that the routes would be adequate?

Mr. Hillyer: The Commission says it is no through route at all.

Mr. Eshelman: I think that is all I have on direct, sir.

You had nothing to add?

The Witness: No.

Exam. Berry: Is there any cross-examination?

Mr. Hillyer: Yes. I have got a few questions.

Cross-examination.

By Mr. Hillyer:

Q. You said something about your mileages being shorter just now. You meant the direct mileage and not the mileage with the back haul; didn't you?

A. The direct mileage; yes, sir.

[fol. 645] Q. Now, do you call this route, say, from this Chicago to points on the Eastern Shore, with a back haul down from Harrisburg to Hagerstown, do you call that a through route?

A. Yes, sir; I do.

Q. Well, now, you have read some opinions here of the Interstate Commerce Commission. I will just make a brief reference to one on that point, referring to this through route. The Commission says, 146 I. C. C. 614, "It can hardly be called a through route where the traffic moves in and out of Hagerstown over the same line and the joint rate applies only with the addition of a back-haul charge for the out-of-line movement"; and then they further say, over on the next page: "A route requiring such service and a special charge therefor is obviously in a class by itself and is not comparable with the routes on which there is no back haul."

Mr. Eshelman: Mr. Examiner, I believe counsel——

Mr. Hillyer: Wait a moment. I have just got three questions to ask.

Mr. Eshelman: But this is not a question for him to answer. That is a legal question. I think you have made a good point. I think there cannot be a through route unless more than one company joins in it. I think under the law it has got to have two people joining to make a through route, and obviously if this is a one-line haul it is not a through route. I do not want my witness to argue with you about it.

[fol. 646] Mr. Hillyer: Your witness said he called it a through route.

Mr. Eshelman: Well, then, I will overrule him to that point. If it is a one-line route I do not think it is a through route.

The Witness: May I say that is what I meant. It was a one-line route, that is what I meant by through route.

By Mr. Hillyer:

Q. But some of the longest routes in the world are one-line routes.

A. Not on the Pennsylvania, Mr. Hillyer.

Exam. Berry: Don't argue. Just answer.

By Mr. Hillyer:

Q. Going through this exhibit hastily—of course, I have not had time to study it in great detail—I notice some 30 or more pages in this volume devoted to back-haul charges. I counted them. I think there are more than that. But in running through it hastily I got that many.

Now, you have brought that subject in here. You compared the back-haul charges—and you do not have to answer this if you do not wish to—but I want to know why you did that. Why are you justifying the back-haul charge? Do you think that is involved in this case?

Mr. Eshelman: I will be glad to answer that, if you wish me to, as to why I had him do it.

Mr. Hillyer: How?

Mr. Eshelman: I will be glad to answer that if you wish [fol. 647] me to as to why I had him do it.

Mr. Hillyer: If we get into an argument between you and me, why, it will take longer than I want it to.

Mr. Eshelman: I thought maybe I would know better why I wanted him to do it than he would.

Mr. Hillyer: I kept very quiet while you were asking questions. I just have about three to ask him. If he cannot answer it, he may say so.

The Witness: What is the last question?

Mr. Hillyer: Would you read the question, please?

Exam. Berry: Read the question.

(Question read.)

Mr. Eshelman: I still think that is a legal question.

Exam. Berry: He says the witness does not have to answer it if he does not want to.

Mr. Eshelman: I want to serve notice, I would not be bound by what my witness says, but I think the law is—

The Witness: I won't answer it that way.

By Mr. Eshelman:

Q. I wanted to be sure I asked you the question. I did not care whether I got an answer or not. I wanted it in the record after he got through.

Exam. Berry: Mr. Eshelman undertook to answer it once before. I think he said it was some theory—what was your answer before?

Off the record.

[fol. 648] (Discussion off the record.)

Exam. Berry: On the record.

By Mr. Hillyer:

Q. Now, just one or two more questions, please.

I do not have the time to count the pages, but there are a good many pages in this volume devoted to transit charges. Did you put them in with the idea of justifying a transit charge, or did you think a transit charge was involved in this case?

A. I think, Mr. Hillyer, wherever transit charge is used it is used with primary application of back-haul or out-of-route charge. The examination, and the exhibits, the explanation of them, do show that.

Q. As I understand it, then, the pages I counted have transit charges on should be added to the 30 pages where I have the back-haul charges?

A. If you care to indulge in mathematics, that would seem to be O. K.

Q. Now, I notice you devoted a great deal of time in this exhibit, a great many pages are devoted to showing the transits that are now in effect through Hagerstown.

A. Yes, sir.

Q. And my question about that is, are those transits any different from the general transits that all these millers have?

A. Those transit are different in this respect, they are [fol. 649] what Hagerstown has.

Q. They are what?

A. They are different in this respect. This is what Hagerstown has, these points we covered here, and he has as many on the average without out-of-route or back-haul charge as any other Trunk Line miller, but a few miles east, west, north, or south of Hagerstown you will find he has a slightly different origin and destination territory. In other words, Hagerstown now has without out-of-route or back-haul, the benefit of everything which its location entitles it to.

Q. All right, then, I understand your defense here is because this complainant has other transits than the one he is here asking for on this route, and your argument then is, from this exhibit here, that he is not entitled to the one he is asking for.

Mr. Eshelman: Mr. Examiner, I will object to that question as argumentative.

Exam. Berry: So is a lot of his testimony, Mr. Eshelman.

Mr. Eshelman: I do not want him—I am not going to be bound by what he says is my defense in this case. He said, "Is it your defense."

Exam. Berry: I thoroughly agree with you, Mr. Eshelman, that the cross-examination is out of line and is improper in character, but so was a large part of this testimony.

Mr. Hillyer: I do not want to take too much time on that. [fol. 650] Exam. Berry: Go ahead.

Mr. Hillyer: I could take an hour here and draw these things out in piecemeal until I finally got it and you would never know it, but going at it this way I am trying to take 5 minutes—of course, you can make your point about it, but certainly the question I asked the witness was pertinent to his direct examination, and he need not answer it if he does not want to. He talks very long and lengthy on direct-examination, and he has very little on cross.

By Mr. Hillyer:

Q. Now, you offered some exhibits here showing a great many transit at other points where there were back-haul charges. Do you recall that?

A. Yes, sir; out-of-route or back-haul charges.

Q. How?

A. Out-of-route or back-haul charges.

Q. Yes. Did you make any investigation at any of those points to find out whether those, if there were anybody who used them? Of course, we know there are a lot of them not used at all, but in the case you take a point where it happened to be the transit was actually used, did you investigate to find out whether that man had other routes without a back-haul charge?

A. In one case I know specifically he paid a back-haul charge where he did have a route without a back-haul charge.

Q. You found one, did you?

A. I found one; yes, sir.

[fol. 651] Q. Now, the balance of your exhibit that I have not covered in these few preliminary questions seems to be devoted to the question of rates and the grouping in the East

and the West territories. Is it your idea that that is involved in this case?

A. Yes, sir; as affecting the charges, it is.

Q. You heard our witness say no rates were involved, no transit charges, no back-haul charges?

A. Well, I cannot quite agree with your witness, Mr. Hillyer, because coming to our territory, what he wants to do is reduce the rates $4\frac{1}{2}$ cents a hundred pounds. If that does not reduce charges I do not know.

Exam. Berry: Is that all?

Mr. Craig: I would like to ask a few questions, Mr. Examiner.

By Mr. Craig:

Q. Mr. Thornton, you said in reply to a question of your counsel, the Commission passed on the three-way rule, 17000, Part 7.

A. I said they sanctioned it; yes, sir.

Q. What do you mean by that?

A. They upheld it.

Q. Sanctioned?

A. Upheld, found proper, legal.

Q. In what page of the decision of 17000, Part 7, is that where they did that?

[fol. 652] A. I gave the citation at the time, Mr. Craig. It is in there, I assure you.

Q. It is your contention, then, and you have read the decision that the Commission upheld, and held that the three-way rule was proper, in 17000, Part 7?

A. They found the three-way rule in part O. K.; yes, sir.

Q. As I understand from your testimony now, Mr. Thornton, and it is your idea where the distances are reasonable compared with the short-line distance, and where there are only two railroads involved, and where the route is via a junction point, that normally traffic should be and is interchanged between two roads, that there is no objection to establishing through routes under those circumstances?

A. Well, through routes are established under those circumstances pretty nearly universally today, Mr. Craig; that is your fabric of through routes, such routes as those you have just described.

Q. Did you say that one of the big objections you had to the routes sought was the fact that three or four or five railroads are involved?

A. Very definitely; yes, sir.

Q. And did you not say in answer either to a question from your counsel or the Examiner, that it would be different if only two railroads—didn't you use an illustration showing in Eastern Trunk Line territory the routes where [fol. 653] only two railroads were involved in the routes?

A. I showed that the Pennsylvania Railroad would long-haul itself by two lines, but I said I was not advocating the establishment of such routes.

Q. But you held that up as being an ideal situation.

A. No, I did not.

Q. Where two loads were involved?

A. Because I specifically said I was not advocating the establishment of those routes, that I was willing to let the status quo obtain.

Q. Now, I am sure you said at some place in your direct testimony—would you mind telling me now what you think is a good through route that you and your counsel were talking about this afternoon?

A. From where to where, Mr. Craig?

Q. Take Chicago to Salisbury, Md.

A. The Pennsylvania Railroad, the best route there is.

Q. Now, take this route you have in connection with the N. & W., by the same token a good route from Chicago to Lynchburg, W. Va., would be the Pennsylvania, Columbus, Ohio, and N. & W.; that is very economical?

A. Pennsylvania what? To Lynchburg?

Q. Yes; West Virginia.

A. Yes.

Q. But the Pennsylvania has a route in connection with [fol. 654] the N. & W. via Hagerstown, Md.?

A. Yes, sir.

Q. Isn't that route a little longer than the one through Columbia would be?

A. Undoubtedly. You will recall, Mr. Craig, I gave the reason for the establishment of that route, to meet the competition of the B. & O. through Shenandoah Junction, which route is also longer than the B. & O. route through Columbus with the N. & W.

Q. Now, it is your position that you are entitled to the long haul on traffic going, say, to the Eastern Shore?

A. Yes.

Q. East of Buffalo or west of Buffalo?

A. Yes, sir.

Q. But it is also your position, isn't it, that the N. & W. is not entitled to the long haul on business going via Pennsylvania, we will say, to Petersburg, Va.?

A. No, that is not my position. The N. & W. is entitled to its long haul, because while we do have a Hagerstown route they granted us to equalize the B. & O. competitive situation, there is also a route between the same points via Columbus, Ohio, or Cincinnati; I don't know which one of those Ohio River points.

Mr. Craig: That is all.

(Witness excused.)

[fol. 655] Mr. Eshelman: May the record show the exhibits were offered and received?

Exam. Berry: Yes.

(Exhibits Nos. 45 to 65, Witness Thornton, Received in Evidence)

Exam. Berry: We will take a short recess.

(There was a short recess taken.)

Exam. Berry: Gentlemen, let us resume.

F. H. CLARK being first duly sworn, testified as follows:

Direct examination.

By Mr. Eshelman:

Q. Give your name.

A. F. H. Clark.

Q. What has been the length of your operating experience with the Pennsylvania Railroad?

Exam. Berry: Will you waive his qualifications?

Mr. Hillyer: Yes.

A. Thirty-two years.

By Mr. Eshelman:

Q. And part of that operating experience has been also accounting work?

A. Yes, sir; about 12 years of it.

Q. Will you describe, and I think perhaps it would be just as well if I would turn you loose and describe these interchanges via Fulton Junction, York, and Hagerstown. Perhaps we will lose less time if I do not interject any [fol. 656] questions. Any time you want questions if you will let me know I will put them in.

First, I think we ought to identify the map as Exhibit No. 66, and state what is the nature of the Pennsylvania Railroad's arranged freight service.

A. The Exhibit 66 is a map of the Pennsylvania System.

(Exhibit No. 66, Witness Clark, marked for identification.)

The Witness: The Pennsylvania has established an arranged freight train schedule to handle with expedition a range of traffic in all directions, particularly is it true of traffic moving from the West to the East because that is the predominating direction of the loaded movement on the Pennsylvania System.

For example, out of Chicago, we have six arranged scheduled trains through to Enola Yard, which is opposite Harrisburg, Pa., on the other side of the Susquehanna River. We have two such schedules from East St. Louis, two from Detroit, three from Buffalo, and between these points are many other schedules. Before dealing with the other schedules—in fact, we have over 800 arranged freight train schedules on the system exclusive of local freight train schedules.

Q. And are those set up with the view of not only taking care of traffic originating at those western points such as Chicago and St. Louis, but also local points and interchanges [fol. 657] with other lines in C. F. A. territory?

A. They are, and this interchange movement might be measured to some extent by the fact that on a line drawn east through—east of Buffalo, Erie, and Pittsburgh we have approximately 414 interchanges with foreign connections, and about 259 east of that line, so that we provide an adequate service for any traffic that may be offered us in C. F. A. territory for eastern destinations.

Q. Now, as that traffic moves, what is its route on the Pennsylvania and what — points does it converge?

A. Its main route is Pittsburgh to Enola Yard, which, as I said before, is opposite Harrisburg, Pa., with connections out of Altoona to the east and north; at Enola we have a very important yard. At that point traffic diverges in all directions. A measure of that might be statistically stated that we have over 65—an average of 65 regularly scheduled trains in and out of that yard each way, per day, and that does not include the many extra sections and extra trains dispatched, nor does it include the local freight trains.

Q. Enola is just across the river from Harrisburg?

A. Yes, sir.

Q. You say each way, you mean east and west?

A. No, I mean in and out. I should have said it that way.

Exam. Berry: You say in and out each way?

The Witness: Into Enola Yard and out of Enola Yard.

[fol. 658] By Mr. Eshelman:

Q. So that on traffic which meets this flow, or flows into this route from Pittsburgh or Enola, or which comes into the branches, such as from Buffalo or Hagerstown, or into this section, there is service out of Enola to all Eastern territory on the P. R. R.; is that true?

A. East and north, or south and west, all directions; as far as Hagerstown is concerned we have three scheduled trains from Enola Yard to Hagerstown and three scheduled trains in the other direction, and also many extras and additional sections of these trains are operated over the same route.

Q. Will you continue.

A. I believe that is all I have to say in connection with Exhibit No. 66.

Q. Now, will you describe the physical operations briefly at the junctions which the complainant has suggested be used for the establishment of through routes from Western Maryland, Pennsylvania Railroad, taking first Fulton Junction to York, and also describe the situation at Hagerstown.

A. At Fulton Junction we have one interchange track used for both deliveries and receipts; in other words, the

Western Maryland and Pennsylvania Railroad use the same track. That will hold approximately 28 cars.

Q. While you are talking about that, will you identify your next map, Exhibit No. 67.

(Exhibit No. 67, Witness Clark, marked for identification.)

A. Exhibit No. 67 is a straight line diagram of the track layout; on the left the interchange point, and extending on the right to our Bay View Yard. I will tie up my explanation with this exhibit shortly.

Well, it can be located, the interchange track at the extreme left, which is a light black line connecting the Western Maryland route marked to Hagerstown with the Pennsylvania Railroad route marked to Washington. That track, as I have said, will hold about 28 cars, and it has three sidings, private sidings, extending from it.

Q. Those do not show on the map?

A. They do not show on the map.

Q. And this interchange track that you mentioned is, the little light line, is it, between the right track, through the word "Fulton Junction"?

A. That is right. Necessarily, the use of this track for interchange purposes, and also for serving the industries, three of them located—and important ones—reduces the use of the track for interchange purposes, both in time and in space.

It is located in a cut, and while this is a straight line diagram the track actually is curved considerably.

The average interchange at that point for the year 1940 was 28 cars delivered and 27 cars received during the first six months per day; during the first six months of 1941, 29 [fol. 660] cars delivered and 28 cars received per day; so you will see that the capacity of the track is about used. Because of the fact that we have but one track there; that is, there has to be an arrangement with the Western Maryland as to the time it is used. That road makes deliveries to the Pennsylvania Railroad between midnight and 2 p. m., ordinarily. Of course, there are always exceptions, and the Pennsylvania Railroad makes deliveries between 2 p. m. and midnight.

It will be noted from the diagram that the light line is joined to No. 4 track. No. 4 is one of our westbound or

southbound—a better description—main tracks, and over this route are moved the very important passenger and freight service running from the extreme South to the extreme East, and also North.

The track is then joined, you will notice, by the exhibit, to running track No. 5. When cars are to be removed by the Pennsylvania Railroad crews from the interchange track, they having been placed thereon by the Western Maryland, that crew comes from what is known as our Gwyns Run Yard, which is about a mile and a half south of this interchange track. The yard is not shown on the exhibit. They cannot go onto the interchange track until they receive permission from the operator at Fulton Junction Tower, which is the rectangle shown in the "V" made by the Western Maryland and Pennsylvania Railroad tracks, and that permission will not be granted if there are any [fol. 661] through movements emanating from the passenger station, which is noted on the exhibit, through the tunnel known as the B. & P. tunnel, and shown on the exhibit.

Consequently, the crews are frequently delayed. After they do get on the interchange track they must repeat the performance; in other words, they cannot leave that interchange track without permission from the operator.

On those occasions when we have more cars to deliver than the interchange track will hold, it is generally the practice with the approval of the Western Maryland to push the cars down over on the main track into a yard, Western Maryland yard, which is not shown on the exhibit but is somewhat to the left of the words "to Hagerstown." They cannot do that on the occasions of excess cars over and above the interchange capacity when they are making deliveries to the Pennsylvania Railroad because of this condition I have just described.

Necessarily, that means that we must meet them with a crew, and that means that crew must be taken away from its industrial work or yard work and assigned to the interchange work.

Should the business increase at this point to such an extent, to any great extent, it would mean either the use of additional crews or the industrial service would suffer. It will also be noted that this interchange is located practically at the south portal of the B. & T. Tunnel.
[fol. 662] Q. What is the length of that tunnel?

A. That tunnel is a mile and a half long, and has a grade of 1.39 percent against the southward movement, which means that most trains moving south must have helping engines, which proceeds generally as far as Gwyns Run and return through the tunnel on the opposite track.

As a measure of the number of movements through that operation a check was taken and amounted to an average of 177 per day.

The cars delivered to the Pennsylvania by the Western Maryland are taken back into Gwyns Run Yard. They are classified and cars for destinations such as those on Del-Mar-Va Peninsula must then be moved from Gwyns Run Yard through the B. & T. Tunnel, through the passenger facilities noted on the exhibit, and then through Union Tunnel to the north of the passenger facilities just about,—the tunnel being about six-tenths of a mile long and having an ascending grade against the northward movement of 1.2 percent.

The traffic then proceeds into Bay View Yard, shown at the right of the exhibit.

Bay View Yard is approximately 10 miles from Gwyns Run Yard.

At that point traffic is classified and dispatched in road trains.

Now, the movements through Uniontown approximately [fol. 663] 205 per day—so that we have there, a measure of the intensity of the traffic—these tunnels are operated on practically what we know as an absolute block operation. In other words, one train in the tunnel cannot be followed by another train on the same track until it has cleared the tunnel operations.

Traffic interchanged at Fulton Junction is practically short-haul traffic.

Q. That is traffic for the Baltimore area?

A. Generally speaking; I think that covers that pretty well.

Q. Now, will you explain the situation at York.

A. Now, York—I do not have any exhibit covering that, but the interchange track is located in what is known as West York on Western Maryland property, and will hold about 30 cars. It is located approximately 3 miles from our classification yard, and in order to get to it and from it we must pass through city streets, 18 crossings, at grades.

Traffic delivered to the Pennsylvania Railroad by the Western Maryland after having been placed upon this track, and the condition there is somewhat similar to Fulton Junction; in other words, their deliveries are made between midnight and noon, and ours between noon and midnight and so it is generally the practice to serve the interchange track approximately at noon or 1 p. m. To do this we must send a locomotive light from our classification yard at York, 3 miles distant. The interchange track is located on a severe grade so that engine can handle [fol. 664] probably not more than six or seven hundred tons. That would mean in cars, say coal cars, maybe six or seven.

The cars that have been removed from that track are taken back to the classification yard at York through the same route that I have described. That route not only crosses streets, but it crosses, traverses a very heavy industrial area in which we have not less than two, generally three, yard engines working, and the Western Maryland also have power working in that same area, so that there is interference of either one or the other.

Cars delivered to the Western Maryland are generally taken out in the morning by these industrial crews on their way out to West York for service, and unless there is room on the interchange track when they arrive through the agreements which we have, it will be necessary to set the cars aside until there is room to place them.

These cars are mixed indiscriminately with the industrial delivery cars and, therefore, have to be classified in the neighborhood of the interchange track before the deliveries can be made.

The average deliveries per day at that point in 1940 were 22.7, the receipts 22.5; the first six months of 1941, 26.7 delivered and 24.7 received.

York interchange was established on an order of the Commission for the purpose of taking care of local traffic at that [fol. 665] point. That order is cited in 107 I. C. C. 219. The traffic having been placed in our yard at York, is then classified and those cars for the eastern destinations are moved therefrom in an arranged service train which moves via Columbia. We have a branch that runs from York to Columbia, which is shown on Exhibit 66. That is a single-track line, about 13 miles long, has only two passing sidings, the largest of which will hold about 35 cars, and

this particular train will run from 70 to 75 cars, leaving York. So that no other train can make use of these facilities while that particular train is in transit.

At Wrightsville there is a bridge which extends across the Susquehanna River to Columbia, a mile and a quarter long. At the east end, the track which I have described crosses the two main freight tracks running from Enola Yard south and then connects with the yard track at Enola Yard.

Q. At Columbia?

A. At Columbia. The particular train I have been talking about customarily stops on the bridge, cuts off the cars that are going to the peninsula points, and makes the move I have just described, making necessary for them also to recross, on recoupling to other trains, recross the main line track and recouple to the train. The cars cut off are then later picked up by a train operating out of Enola Yard and moved down through Perryville, which can be found on map Exhibit No. 66, thence over the main line of the Pennsylvania between Perryville and Edge Moor [fol. 666] Yard, which is the yard that serves Wilmington and that area.

At that point the cars are set off, reclassified into a train operating over the Del-Mar-Va Peninsula, and for destinations such as Salisbury are moved therefrom in arranged scheduled trains.

Q. Now, will you describe the interchange, if you are ready to do that, at Hagerstown.

A. At Hagerstown the deliveries to the Western Maryland Railroad are made in a section of their yard. There are five tracks, on any of which the deliveries may be made "except that", and Western Maryland designates the particular track.

Q. Well, on traffic going to the complainant, received for moved to the complainant, how would that be handled.

A. That traffic is moved from Enola Yard in one of the three trains I have previously mentioned, and is given special attention. Those cars are not taken into the Shomo Yard, which is the main yard at Hagerstown, but are set off in what we call our No. 1 yard, located near the Pennsylvania Railroad freight station.

These shipments are generally order notify shipments, and by that practice they are available for quick movement as the consignee orders them in. Had they been sent to

Shomo Yard they would be buried in the hold track until the bill of lading was lifted and the car ordered in. [fol. 667] When such orders are received the cars are moved by our yard power to the interchange track I have previously mentioned.

To reach that track we have to go through our interlocking plant which controls the movements at that point and is located near what the Complainant's Exhibit No. 1 shows as South Junction. From that point, of course, the Western Maryland handles the cars to the Stickell plant.

Q. Now, then, on a movement from the Stickell plant to the Pennsylvania, would the movement be the same whether that were an outbound shipment over the Pennsylvania that had come in by the Pennsylvania, or whether it had come in by the Western Maryland, that was to go outbound, assuming that the route was established through Hagerstown?

A. Yes.

Q. The physical operation is the same?

A. The physical operation would be the same; the Western Maryland would make delivery to the Pennsylvania Railroad at our assigned interchange track, which is directly opposite their interchange track to the east of this interlocking plant, whereas the Western Maryland interchange was to the west of that interlocking plant.

Exam. Berry: It would be more economical if you received the car at Hagerstown and carried it up around Harrisburg than to receive it at Fulton Junction or York? [fol. 668] A. Absolutely. The interchange track will hold about 50 cars—that is, the P. R. R. interchange track will.

Exam. Berry: At Hagerstown?

The Witness: Yes, sir.

By Mr. Eshelman:

Q. May I interrupt; from the standpoint of service, I do not know if you have gotten to this point or not, but from the standpoint of service via Fulton Junction, York, and Hagerstown, how would that compare via those junctions? I think you described, for instance at Fulton Junction, what was done in the interchange, but I do not believe you carried the movement beyond; I believe you described the line-haul movement, a typical movement west of York.

A. I have not quite finished that Hagerstown yet. I would like to take up that schedule a little later, if you don't mind.

Q. All right.

A. The average deliveries at Hagerstown amounted in 1940 to 10.3 cars delivered, 11.8 received, as compared with the first six months of 1941 they were eleven delivered and 12.3 received.

Now, there are no set times for interchange at Hagerstown as there are at the other two points.

Q. Have you any arranged freight schedules with the Western Maryland through Hagerstown?

A. No, we do not. Of course, there are heavy interchanges [fol. 669] with the Norfolk & Western at that point, and there are arranged schedules with that railroad through Hagerstown, but there are none with the Western Maryland. In fact, that is true also of Fulton Junction and York.

Exam. Berry: You mean no arranged schedules with the Western Maryland?

The Witness: There are no agreements between the railroads, themselves, that certain cars shall travel on certain trains.

Exam. Berry: But you do have agreements as to when you shall place and take the cars off the exchange track.

The Witness: No. No. The deliveries at Hagerstown—

Exam. Berry: No. I am talking about York and Fulton Junction.

The Witness: Oh, we have agreements. We divide up the time, because the situation there is different. We have one track for deliveries and receipts. At Hagerstown, of course, you have independent tracks for deliveries and receipts. There has to be some agreement between the railroads, because of the fact that the interchange per day almost equals the capacity of the track.

At York, for instance, one point I forgot to mention, if the deliveries did exceed the York capacity or interchange track capacity, it would be necessary in the case of deliveries to that railroad to push the cars down to their yards. They [fol. 670] could not do the same thing to us because they would be moving out on the main track.

Exam. Berry: The only question here is the outbound movement at Hagerstown.

The Witness: Well, an outbound movement, Mr. Examiner, implies the return movement. Under car service rules, of course, the car would ordinarily go back to the junction point, where received.

Exam. Berry: That is, after the car is made empty, you mean it would come back?

The Witness: Yes. Generally speaking, you will notice that these interchanges here are very well balanced, which to my mind also indicates that they are mostly local traffic.

Exam. Berry: The testimony is here, however, that the complainant largely loads out the inbound cars. The cars are coming in from the West, and he loads them out to eastern destinations.

The Witness: I have not heard such.

Exam. Berry: Wasn't that your testimony?

Mr. Hillyer: Yes, sir. That is the sworn testimony of the man who attends to it every day.

The Witness: Even that would imply the use of more cars, because the inbound consignment will run to heavier tonnage than the outbound.

By Mr. Eshelman:

Q. I believe they are not talking about the same thing. [foi. 671] They are saying that inbound shipments, for instance, into Hagerstown, that is unloaded, that they employ that car for the outbound movement, but what the witness is talking about, under car service rules the identical car, for instance, that is used to send to the Eastern Shore, assuming that is a Wabash car, something like that, would have return rights under the rules to move back over that route.

Exam. Berry: It would move back to Hagerstown?

Mr. Eshelman: Oh, yes, unless there is a contrary loading—I mean a different loading, also in accordance with the rules, but it would have a right to come back that way.

By Mr. Eshelman:

Q. Isn't that what you mean?

A. Yes, sir.

Exam. Berry: As a matter of fact, you would not move it back to the West via Hagerstown?

The Witness: If it had return rights via Hagerstown. We make home route cards for all foreign cars, which indicates where we got them. We are under obligation to return that

car in accordance with the home route card unless owner gives us the right to return otherwise.

By Mr. Eshelman:

Q. Is that so the out road haul will also bear return of the empty?

A. I would not want to state the reason for it. It may be; but the rule is there nevertheless.

Q. Will you continue.

[fol. 672] A. I think that that pretty well covers Hagerstown.

Q. Now, are you ready to describe the scheduled movements that would be available out of Hagerstown and compare the efficiency in that respect of the various routes through the Pennsylvania.

A. I would like to do that in connection also with Mr. Stickell's exhibits, and I might cover two things at once.

Exhibits 3 and 4, you will note by reference to those exhibits, he has shown a route to Chatham via Fulton Junction. Now, Chatham, if you will refer to Exhibit No. 66, is located on one of the branches between Pomeroy and Avondale, which can be found by finding Wilmington and going slightly to the left and to the north.

We have no freight train service between Perryville, Rock, to Avondale. If we were to receive a car for Chatham via Fulton Junction, it would have to move either directly into Philadelphia, and then out again via what is known as Wawa Chad's Ford to Avondale and thence to Chatham.

The service between Pomeroy and Avondale is every other day, Mondays, Wednesdays, and Fridays only; or it would have to move to Enola Yard, which is opposite Harrisburg, thence to Lancaster in one train, and thence to Pomeroy in another, and then get this every-other-day service between Pomeroy and Avondale.

Q. Well, considering the Fulton Junction, York, and Hagerstown as possible gateways by which to receive traffic [fol. 673] over routes from the Western Maryland, which are the worst and which are the better, and how do they compare?

A. Well, as of the three, Hagerstown would be the best, and that is exemplified by the scheduled service.

We have trains operating out of Hagerstown. Take Salisbury as a destination point, which has an elapsed scheduled time of 31 hours and 30 minutes; Cape Charles, 39 hours, 15

minutes. We have another schedule which will make, the same points, in 24 hours and 45 minutes, and 29 hours and 55 minutes, respectively.

Exam. Berry: Out of Hagerstown?

The Witness: Out of Hagerstown. That operating with a route for the Western Maryland from Hagerstown via Fulton Junction through Baltimore would be 33 hours; Cape Charles, 45 hours and 45 minutes; Via York, 36 hours and 30 minutes; to Cape Charles, 49 hours and 15 minutes.

By Mr. Eshelman:

Q. And the physical operation would be better via Hagerstown?

A. Yes, sir.

That also answers one of the contentions of Mr. Stickell in regard to these two days' delay.

Q. Right on that—

A. That eliminates one of his days from Hagerstown to destination.

Q. Do you always make this schedule?

[fol. 674] A. In cases of storms, like we had last spring, where every road was tied up, not only in Pennsylvania but other competing lines, we would not make it, could not make it, physically make it.

Q. Do you have any emergency conditions on the railroad?

A. We have also had at times excessive traffic. There have been delays in classification; but, ordinarily speaking, that is the schedule we hold ourselves to make.

Q. Just leave out for a moment the route to Hagerstown, down from Harrisburg, what in short—and perhaps we can shorten this by asking you to state it in summary fashion—are the routes of the Pennsylvania from its own origins and junctions in C. F. A. territory, frequent, fast, and adequate to destinations on its lines in the East?

A. They are. Our competing railroads say so also.

Q. And if you will also include now, in this next question, routes of the Pennsylvania to Hagerstown from these western points, are those also rapid, fast, effective, and efficient routes?

A. They are.

Q. And then if you will consider the routes, or the route of the Pennsylvania from these origin points to these eastern destinations via Hagerstown, and I am referring now to grain which would be transited under the P. R. R. tariff

at Hagerstown, are those routes, in your opinion, adequate, [fol. 675] fast, efficient, thorough-going first-class transportation routes?

A. They are.

Q. Did that conclude what you had to say about this operating description, or did you have some other thought that I missed?

A. I would like to cover a further remark in regard to Exhibits 3 and 4 of complainants, in regard to Milford destination, also routing through Fulton Junction. We would not have a continuous freight train movement for that destination, and such traffic would suffer approximately a day's delay if moved through Fulton Junction because the car would either lay over at Edgemoor Yard or Philadelphia Yard to make the connection to Milford. The schedules are not set up to handle that traffic out of Fulton Junction.

Q. Did your studies enable you to come to any conclusion as to the relative comparative value or efficiency of your Pennsylvania Railroad routes via Hagerstown with routes sought which would come to the Pennsylvania either at Hagerstown, Fulton Junction, or York?

A. Well, I think we covered that by the next exhibit pretty well.

Q. All right. Will you proceed to explain that.

(Exhibit No. 68, Witness Clark, marked for identification.)

A. Exhibit 68. By this exhibit we have endeavored to show the comparative costs for the transportation of 33 tons [fol. 676] of grain products from western origins to certain eastern destinations.

Before we proceed further, I would like to make a correction under item No. 5, where we show C. & O. to Charles Town, W. Va. That should be Charleston, t-o-n.

Q. May I ask right there, is that 33 tons of grain and grain products,—is that really 33 tons of box-car freight?

A. Yes, sir.

Q. Why did you use 33 tons, was that because Mr. Thornton's study developed the 66,000 pounds inbound?

A. That is right.

I will try to shorten the explanation as much as possible as to how we calculated these costs.

Q. I am willing you should shorten it to any extent which Mr. Hillyer's wishes for the purpose of making the train, or extend it if he wants it longer.

A. The underlying data on which the first two sheets are based will be found on the underlying sheets; in other words, the basic information which came from the annual reports of the railroads to the Commission were used.

Perhaps it would be difficult to follow the first step, so that I will explain that in a little detail.

In order to get the investment return on the investment, in allocating it between what I have designated it here as non-related freight and passenger services, we took those particular services that a railroad gives that are not [fol. 677] necessarily involved in the transportation of freight traffic, such as dining cars, stockyards, grain elevators, mail, express, and so on; but those expenses are in the costs reported to the Commission.

Now, I might stop at this point and say that in general this formula is based upon that used by the Bureau of Statistics of the Commission in their statement No. 3812 of March, 1938. I have varied from that to some extent, and this is one of the variations, in that they determine what I have designated as non-related by deducting miscellaneous charges reported by the railroads. I have gone a step further and deducted not only those miscellaneous charges but costs accruing because of the transportation, as I have said, of such things as mail and express, and so forth.

Now, that was done in this way: We took those charges that the railroads report as actual for the four accounts involved, that is, stockyards, grain elevators, and dining cars, hotels and restaurants, and for the remaining items we applied to the revenues for those items which are reported separately by the carriers the operating ratio of all traffic. The expenses thus ascertained being added to those expenses directly reported constituted the amount that we have set down here as operating expenses under the heading of non-related.

Q. So as to exclude them from the computation.

A. So as to exclude them from the computation "Property Investment," which includes the book investment, cash, material and supplies, are divided between those three segregations by the relationship of the operating ex-

penses adjusted. Taking, for instance, the Pennsylvania Railroad, you will notice the percent stated there, non-related, 5.1; freight, 67, and passenger, 27.9. Those percentages were used to break down the property investment between the three groups.

Q. Now, in general, since these formulaes of the Commission are well known, will you just state if there are any other departures from that formula?

A. Yes. I have one or two others.

Q. All right. Then mention those briefly.

A. In getting the non-revenue freight car miles, which appear on the fourth sheet, I obtained such non-revenue loaded freight car miles by dividing the non-revenue net ton-miles, which are directly ascertained, by 40 tons on the assumption that 40 tons constitutes about the loading of a car of non-revenue freight, and that seems borne out very well by the exhibit presented by Dr. Edwards in the Class rate case at St. Louis, in which he arrived at the amount of 39 tons; and then applying to this loaded non-revenue freight car-miles, 75 percent, to obtain the empty car-miles applicable to non-revenue freight. That 75 was used in the Southwestern Divisions case, and is based upon a study made by the Southwestern Division carriers. The rest of the calculation can be followed on the sheet with those [fol. 679] variations.

Q. The formula is shown on the underlying sheets; is that right?

A. Yes. The details are. Anyone familiar with such calculations can follow them. The cost elements at the bottom are self-explanatory, I believe, as the method of getting them is set out on the sheet.

Q. In general, these costs are system costs broken into line and terminal elements for the purpose of applying them to the line terminal and interchange service; is that correct?

A. That is correct.

Now, there are two other features I want to cover before I forget them, as to where I differ from the Commission's formula, and that is intermediate yardings. You will notice under item 4-F, at the bottom of sheet 4, we show the average haul between intermediate yardings.

The Commission in their formula were dealing with districts and that information was available. To obtain it for individual carriers I took from their reports to the Commission the actual miles run by through freight conductors,

and divided it by the number of trips, which would give the average distance that train would run, and would, in my opinion, be approximately what the average haul is between yardings of a train. I also used to equate l. c. l. tons to cars, four tons. The Commission in their formula used most generally in the neighborhood of 3.5.

[fol. 680] I believe those constitute the major differences. Anyway, if there are any others I have not got them up, they are minor.

Mr. Eshelman: I should say, Mr. Examiner, if there should be any questions which might arise how these have been computed, if there is any doubt about it, I would be glad to respond to any request for information of that sort.

Exam. Berry: Very well.

Did you hear his remarks?

Mr. Hillyer: Yes, I hear it. Yes.

By Mr. Eshelman:

Q. Will you just then proceed and briefly indicate the comparisons, Mr. Clark.

A. First of all, I want to call attention to this Exhibit No. 68. It is based upon the movement of one continuous movement from origin to destination over the Pennsylvania Railroad without considering the back-haul or out-of-route movement to Hagerstown.

Q. How about the next exhibit?

A. The following exhibit, No. 69, will cover the movement from origin to Enola, or Harrisburg, as is stated in the record, then to Hagerstown, and from Hagerstown to destination.

(Exhibit No. 69, Witness Clark, marked for identification.)

Q. Well, would the distinction then be this, that the first of these two exhibits assumes through movement, using the through movement of the P. R. R. without going up to [fol. 681] Hagerstown at all, just one carload all the way through, compared with what would happen on one carload going through on the compared routes?

A. That is right.

Q. Also in stopping at Hagerstown, on the second exhibit is a car going to Hagerstown for unloading at transit, and then out again to destination?

A. That is right.

Q. Taking into account the inbound and outbound proportions indicated by the weights found by Mr. Thornton's study.

A. Yes, sir.

Q. And that makes 1.34 cars out for one in; is that right?

A. That is correct.

Q. And also that it will split it up in the way shown, these costs shown above for operating expenses only, and also as including not only operating expenses but rent, $5\frac{3}{4}$ percent return and passenger efficiency, when that can be compared on both bases?

A. That is right.

Q. Is there anything else you wanted to add to that, or maybe I had better ask you this: From this study and from your own knowledge and experience and investigations of this situation, will you state what your conclusion is as to the relative efficiency of the present routes, from origin to destination not via Hagerstown in the case of the Pennsylvania with the proposed routes via Hagerstown so far as [fol. 682] through movement of the same shipment is concerned without transit?

A. Well, the exhibit, Exhibit 68, is certainly indicative of the fact that the Pennsylvania, the direct route, is more economical. I know it certainly is from the operating angle. I do not care to make any specific comparisons. They can be read from the exhibits, themselves.

Q. I just have one more question.

Then, coming to the comparison of the P. R. R. route to and from Hagerstown on a transited shipment as compared with the proposed routes involving transit at Hagerstown, will you state your comparison of the efficiency or economy of those routes?

A. The same conclusion would be arrived at. It is true that in one of the routes there is a lesser cost; for instance, in the Decatur to Chatham, Pa., route via the B. & O. and Cherry Run for \$172 as against \$180.93 via the Pennsylvania. That is the only one of all of them that shows that relationship, and from the operating features I would maintain that the P. R. R. route certainly is more advantageous than the other.

Mr. Eshelman: I think that is all I have on direct.

Did you have anything, Mr. Cross?

Mr. Cross: No.

Exam. Berry: Cross-examination, Mr. Hillyer.

Cross-examination.

By Mr. Hillyer:

Q. Now, when you started out to testify I thought you [fol. 683] were qualifying as an operating man.

What department are you in?

Mr. Eshelman: Did you hear me question him as to his experience?

Mr. Hillyer: Let the witness answer the question, will you?

A. The Pennsylvania Railroad organization is probably a little bit different from most roads. We have an accounting department in the operating department, and I have been in the operating department 32 years, and about 12 of those years have been in the accounting section operating department.

Q. You have been in both of them?

A. Yes, sir.

Q. Now, will you explain again this 1.34 in the heading of this Exhibit No. 69.

A. I will be glad to.

Our traffic department study indicated that the inbound shipments averaged 33 tons per car, and that the outbound shipments averaged 24.6 tons per car. Therefore, to move 33 tons outbound would take 1.3 cars, or, as we have expressed it, 1.34. That will have a bearing in your calculation of gross ton-miles, for instance.

Q. Now, in this last opinion you expressed as to the routes, your routes, the Pennsylvania, and the route we are asking for, have you that work with the Western Maryland Railroad?

[fol. 684] A. Not for that railroad; no, sir.

Q. Of course, these costs over the routes we are talking about would involve costs over other lines than the Pennsylvania, would they not?

A. I do not understand that.

Q. The costs over the routes we are asking for would involve costs on other railroads than the Pennsylvania routes?

A. Yes, sir.

Q. But you are expressing it as your opinion, not based on any facts, that the Pennsylvania route is cheaper than the Western Maryland routes?

Mr. Eshelman: Just a moment.

I object to his statement, not based on any facts.

Mr. Hillyer: Well, if I cannot examine the witness I will quit. Any question I ask, both of them jump up there.

Exam. Berry: Let him answer.

A. I have the facts as reported by the railroads to the Commission, which the Commission themselves accept as facts.

By Mr. Hillyer:

Q. Now, you say you are basing it on that?

A. My cost study is based upon their annual reports to the Commission.

Q. The annual reports of the railroads?

A. My cost studies are; yes, sir.

Q. Is your cost study based on that, too,—is your cost study on what the Commission found or on what you found? [fol. 685] A. I took the report to the Commission, applied in main a formula used by the Bureau of Statistics of the Commission with the exception of the points I have mentioned and got these results.

Q. Now, is that result the cost to the Pennsylvania or cost of these other railroads?

A. Well, it is the cost of all the roads involved in the routes as designated here.

Q. And the Pennsylvania showed a cheaper cost than all the other railroads in the route?

A. With the one exception that I have quoted.

Q. Now, this operating evidence that you gave, did you base that on a personal inspection of the movement of these cars in and out of the Stickell mill?

A. I based it upon that, so far as the P.R.R. property is concerned—of course, the Stickell mill is located on the Western Maryland tracks. I have been there, yes, and observed your lay-out.

Q. Do you consider the operation at Hagerstown an expensive operation?

A. Are you speaking now of the Western Maryland?

Q. Either one or both of them. I will draw the difference after I get your first answer.

A. Well, I won't testify as to the Western Maryland, of course.

Q. Now, which operation would you consider the more [fol. 686] expensive, getting a car into and out of the Stickell plant on the Pennsylvania or the Western Maryland?

A. Oh, the Stickell plant is not located on the Pennsylvania.

Q. How?

A. The Stickell plant is not located on the Pennsylvania.

Q. I know it is not.

A. Well, how can I make a comparison then?

Q. I understood your testimony to be that the Pennsylvania could handle it cheaper in and out of the Stickell mill than the Western Maryland could.

A. Oh, no. I do not remember saying anything like that.

Q. You did not testify on that point at all, did you?

A. In the way you stated it; no, sir.

Q. I thought you referred to Mr. Stickell's testimony and attempted to correct it in some respects.

A. Not in relation to his plant at Hagerstown; I spoke of Mr. Stickell's prescription of a route through Fulton Junction.

Mr. Hillyer: Manifestly, I haven't got the time to go through this cost exhibit here, and I do not think it has much to do with this case, and that is all I care to ask.

Exam. Berry: Is there anything further from the defendants?

Mr. Eshelman: May I understand that the exhibits are offered and received?

Exam. Berry: Yes, let the record show that all the ex-[fol. 687] hibits are offered and received.

(Exhibits Nos. 66, 67, 68, and 69, Witness Clark, Received in Evidence.)

(Witness excused.)

Exam. Berry: Is there anything further from the defendants?

Mr. Eshelman: That is all we have.

Exam. Berry: Will October 20th be all right for briefs?

Mr. Hillyer: Yes, sir.

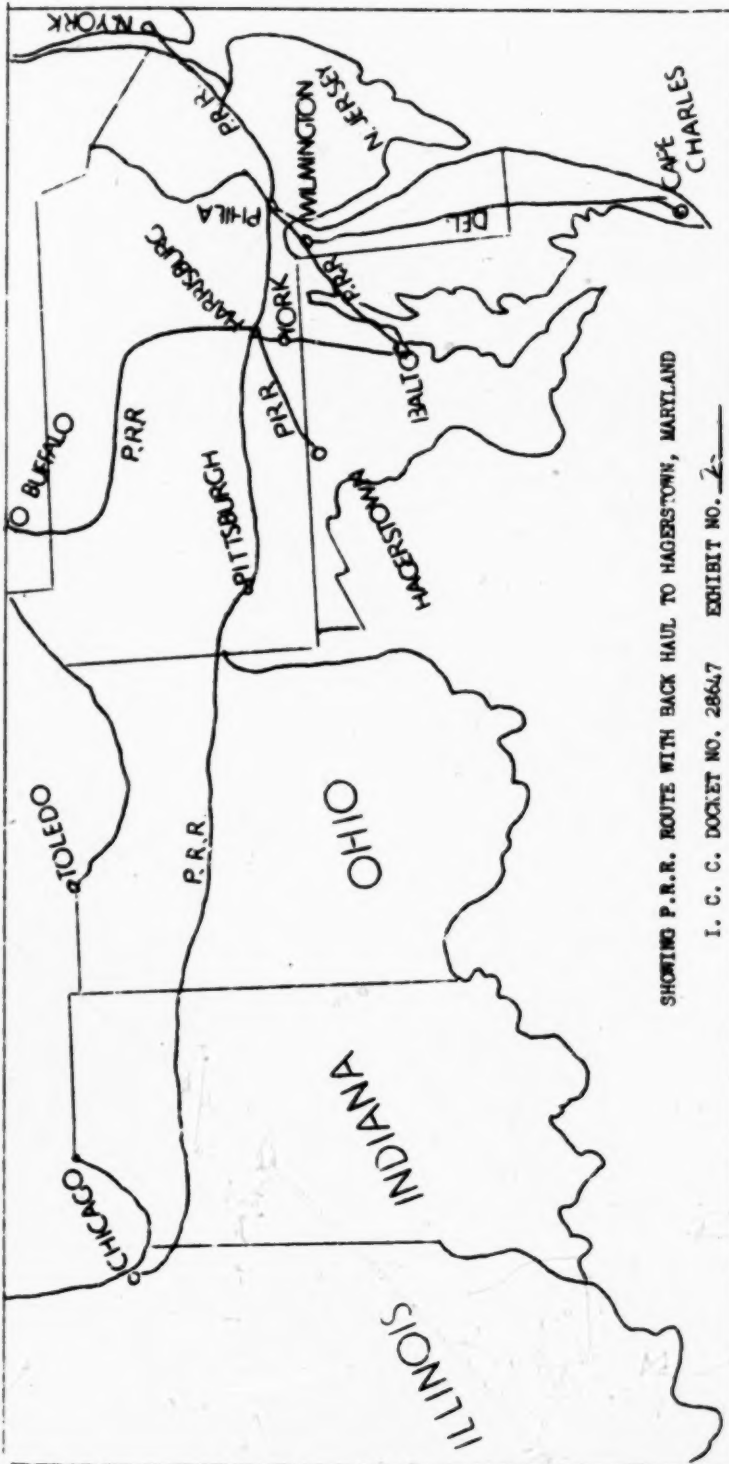
Exam. Berry: Briefs will be due on October 20th.

(The hearing is closed.)

(Whereupon, at 6:10 o'clock p. m., September 10, 1941, the hearing was closed.)

(Here follow 4 photolithographs side folios 688, 688a, 689, 690)





SHOWING P.R.R. ROUTE WITH BACK HAUL TO HAGERSTOWN, MARYLAND

I. C. C. DOCKET NO. 28647 EXHIBIT NO. 2

EXHIBIT No. 3

N.Y.C.R.R. CO. - P.L.E. - W.M.R.R. - to HAGERSTOWN - ICC DOCKET
 P.R.R. to DESTINATION
 # 28647
 Exhibit #....

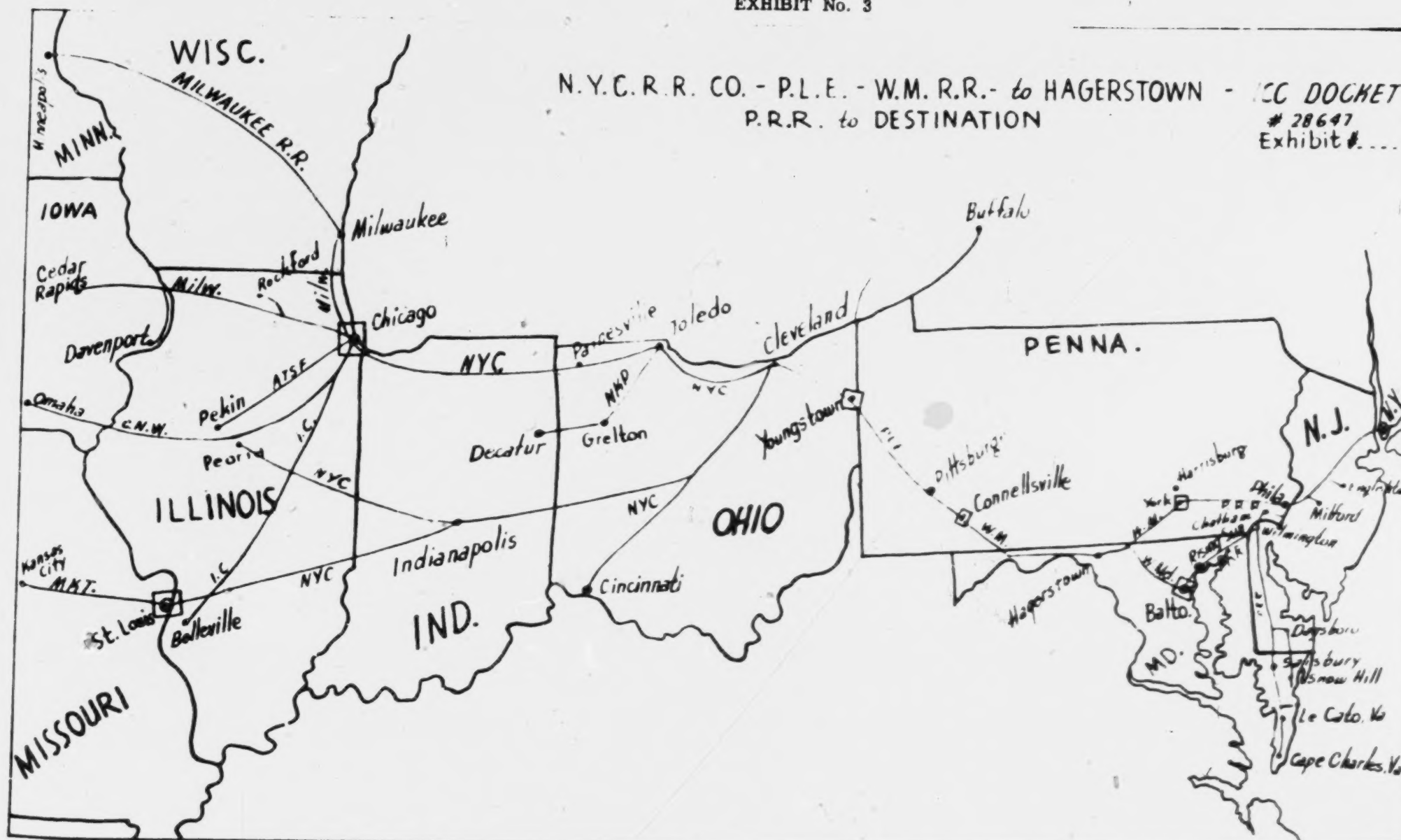
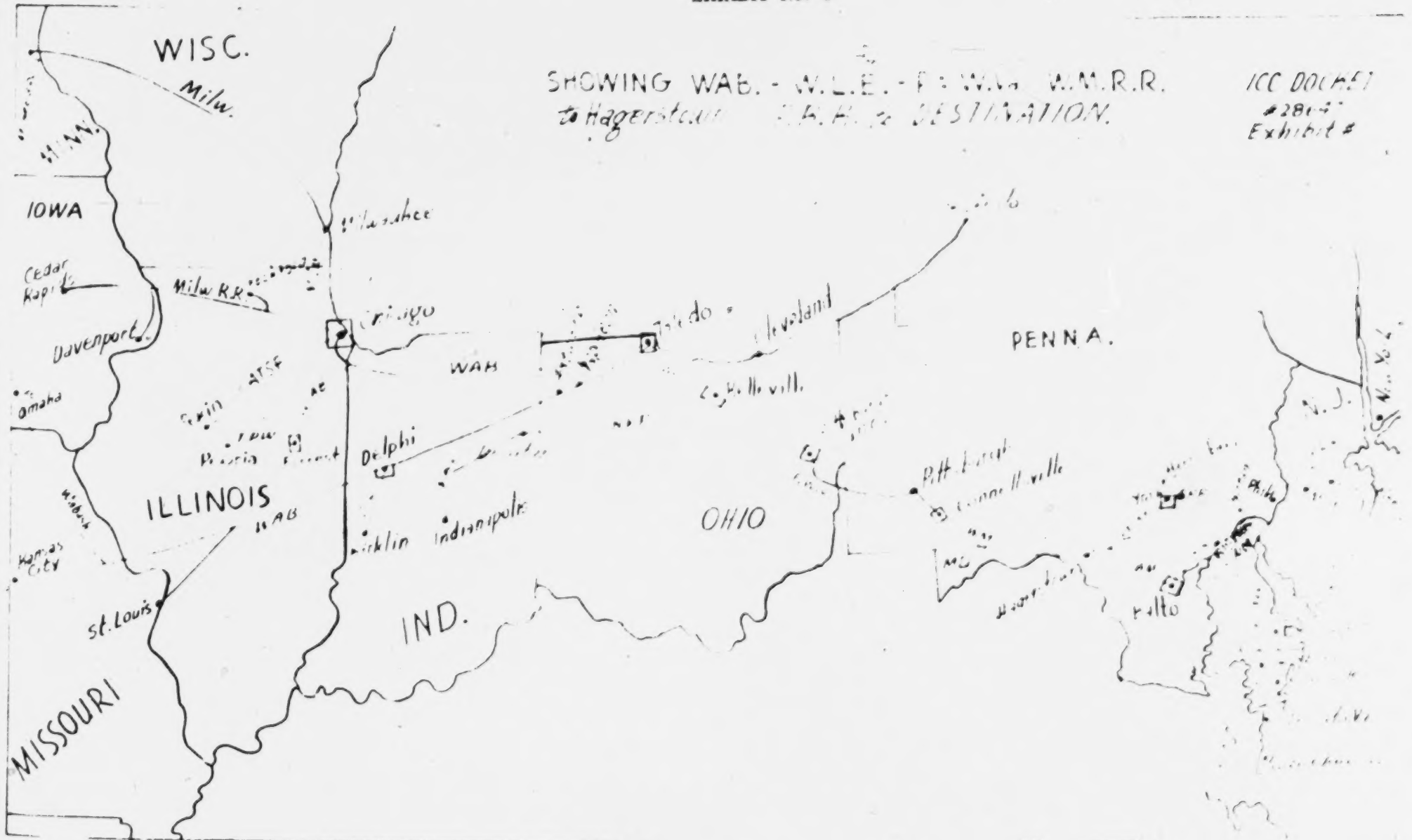


EXHIBIT No. 4

SHOWING WAB. - W.L.E. - P. W. & W.M.R.R.
to Hagerstown P.H. & DESTINATION.

ICC DOCKET
#281-47
Exhibit #





[fol. 691]

EXHIBIT No. 5
DOCKET #28647

D. A. Stickell & Sons, Inc., Hagerstown, Md. Exhibit.
New York City is representative of destinations on the Pennsylvania R. R. in New Jersey and Eastern Pennsylvania. Salisbury, Md. is representative of destinations on the Eastern Shore of Maryland, Delaware and Virginia.

Route	From	To New York Miles	To Salisbury Miles	Rate on Grain Products
A	Chicago	966	934	.26 $\frac{1}{2}$
B	"	975	943	.26 $\frac{1}{2}$
C	"	1054	1041	.26 $\frac{1}{2}$ plus 4 $\frac{1}{2}$ cents
A	St. Louis	1162	1130	.30 $\frac{1}{2}$
B	"	1154	1122	.30 $\frac{1}{2}$
C	"	1197	1184	.30 $\frac{1}{2}$ plus 4 $\frac{1}{2}$ cents
E	Decatur, Ind.	840	808	.30 $\frac{1}{2}$
F	"	797	765	.30 $\frac{1}{2}$
C	"	927	914	.30 $\frac{1}{2}$ plus 4 $\frac{1}{2}$ cents
A	Peoria, Ill.	1190	1158	.28 $\frac{1}{2}$
D	"	1132	1100	.28 $\frac{1}{2}$
C	"	1205	1192	.28 $\frac{1}{2}$ plus 4 $\frac{1}{2}$ cents

Route A—N. Y. C. R. R. Youngstown, Pa.—P. & L. E. Connellsville, Pa. W. M. Ry. to York, Pa. or Baltimore, Md.—P R R to Destination.

Route B—Wabash R R to Toledo, O.—W & L E to Pittsburg Jct. Pa. P & W. V to Connellsville, Pa.—W M Ry. to York, Pa. or Baltimore, Md.—P R R to Destination.

Route C—P R R to Destination with back haul from Harrisburg, Pa. to Hagerstown, Md.

Route D—T P & W R R to Forrest, Ill—Wabash and Route B.

Route E—N K P R R to Toledo, Ohio and Route A.

Route F—N K P R R to Bellevue, O.—W & L E to Pittsburg Jct., Pa. P & W V R R to Connellsville, Pa.—W M Ry to York, Pa. or Baltimore, Md.—P R R to Destination.

Note 1—Route C includes a back haul of 146 miles between Harrisburg, Pa. and Hagerstown, Md. and adds 4 $\frac{1}{2}$ cents or 90 cents per ton to the through rate.

Note 2—All routes except C are requested routes, but are standard used routes as far as Baltimore, Md. or York, Pa.

Note 3—All rates are reshipping rates except from Decatur, Ind.

Tariff Authority: Jones 245 G—I C C 3356

Jones 470 B—I C C 3490

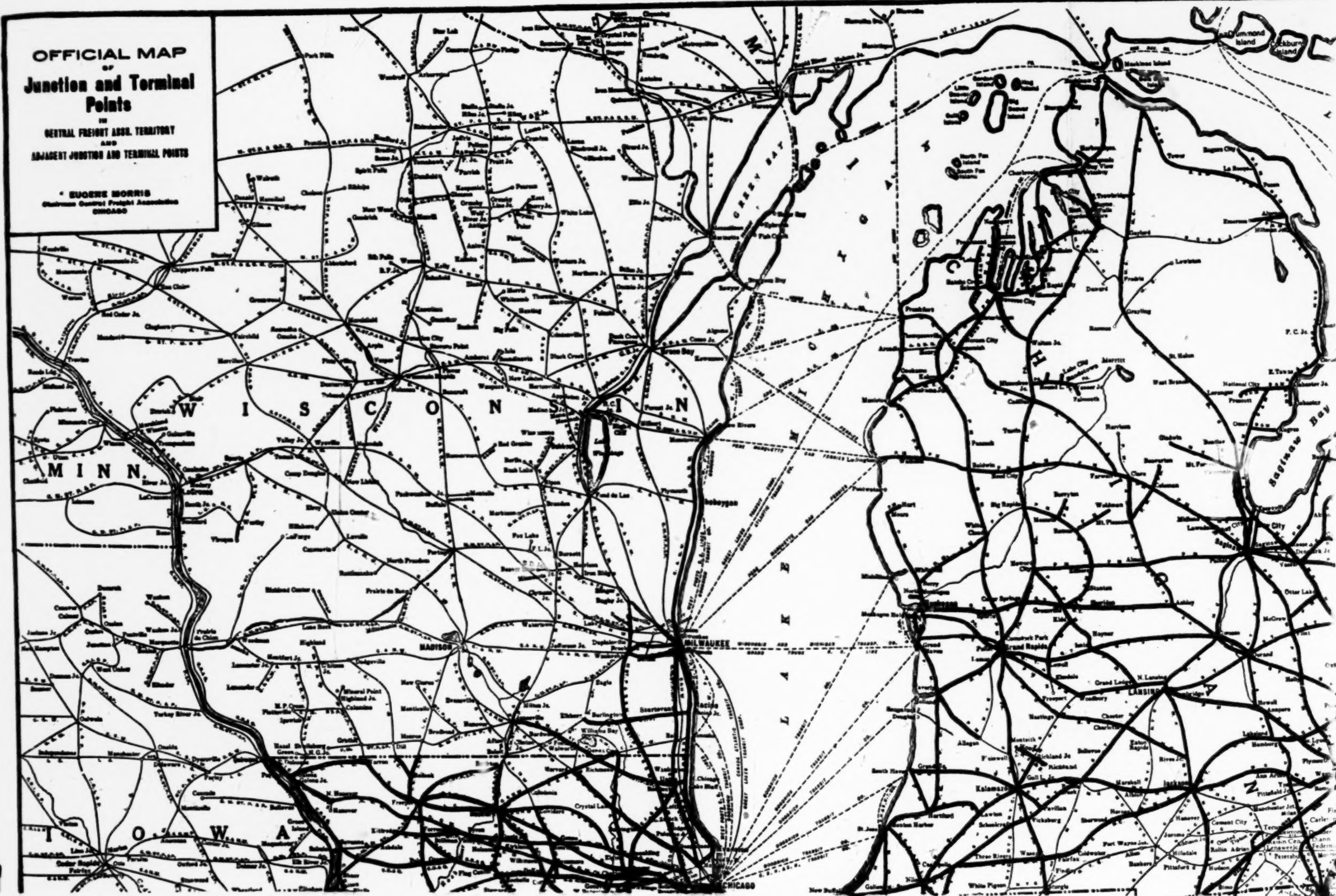
Transit tariff, P R R 1272 C—I C C 2442

Transit tariff, W. M. Ry. I C C 8662

**OFFICIAL MAP
of
Junction and Terminal
Points**

IN
CENTRAL FREIGHT ASSOC. TERRITORY
AND
ADJACENT JUNCTION AND TERMINAL POINTS

EDWARD MORRIS
Chairman Central Freight Association
CHICAGO



Map showing the railroads and indicating the origin territory from which grain may be shipped via Hagerstown, Md., B. & O.R.R., in accordance with Agent S.T. Jones' Tariff 245-G, I.O.C. 3353, and B. & O.R.R. Tariff I.O.C. 23273.

ICC, DKT. No. 28447
EXHIBIT No. 6
WITNESS _____

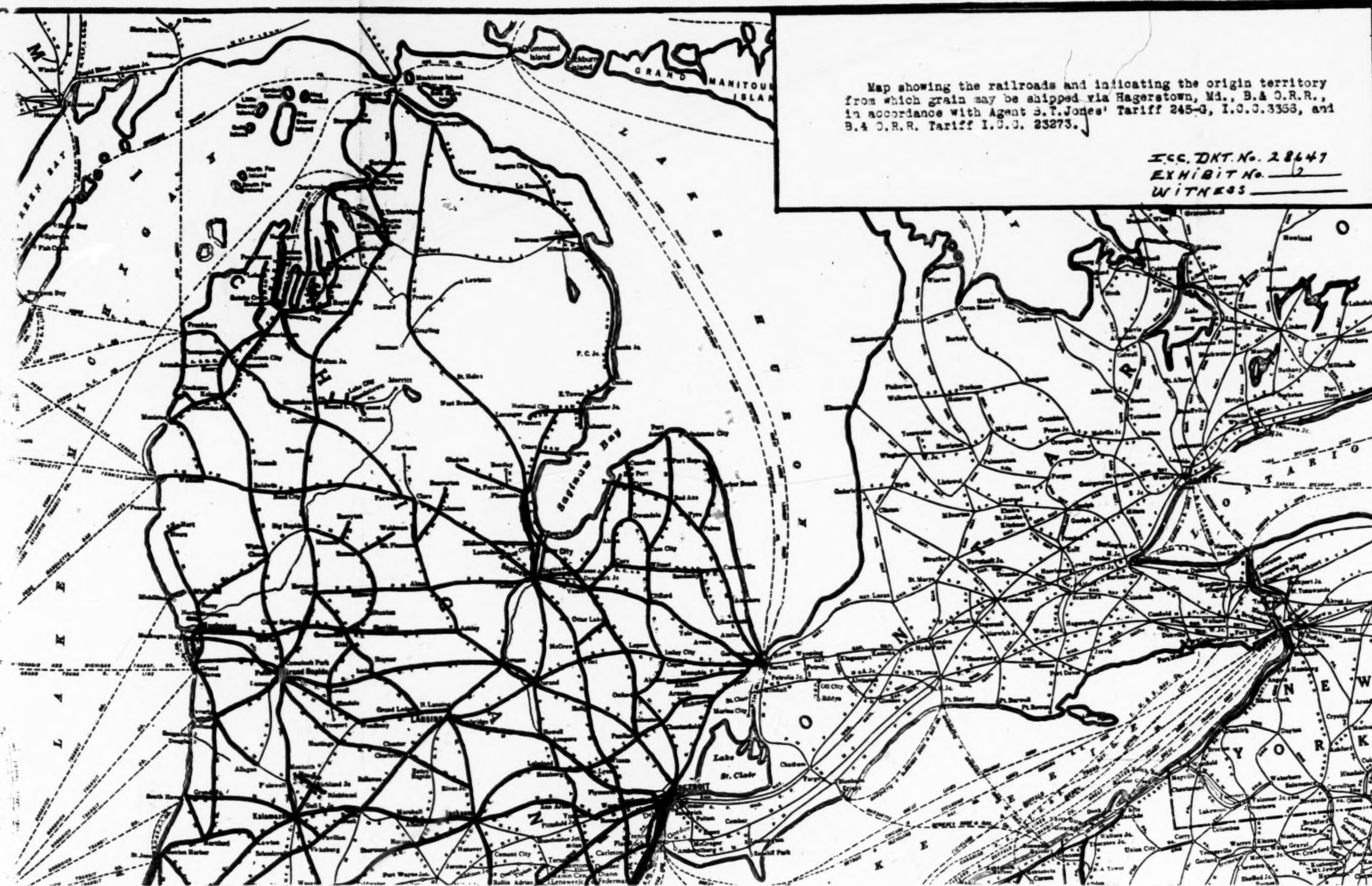


EXHIBIT No. 10

STATEMENT

Showing Detail of Presently Effective Typical Routes on Grain, in Carloads, from Chicago, Ill., to New York, N. Y. via Which Transit is Available at Hagerstown, Md. on Basis of Joint Through Rate From Origin to Destination Without Out-of-Route or Back-Haul Charge.

Origin Road	Destination Road	Route
B&O	CNJ	B&O Cherry Run, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. C.N.J.
B&O	DL&W	" " " " " " " " " " " " Phillipsburg, N. J. DL&W
B&O	L. V.	" " " " " " " " " " " " East Penn Jct., Pa. L. V.
C&O	CNJ	C&O Cincinnati, Ohio, B&O, Cherry Run, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. C. NJ
C&O	L. V.	" " " " " " " " " " " " East Penna. Jct., Pa. L. V.
C&O	DL&W	" " " " " " " " " " " " Allentown, Pa., CNJ, Phillipsburg, N. J. DL&W.
C&O	CNJ	C&O Durbin, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
Erie	CNJ	Erie, Youngstown, Ohio, P&LE, Connellsville, Pa., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
Erie	CNJ	" Creston, Ohio, W&LE, Pittsburgh Jct., Ohio, P&WVa., Connellsville, Pa., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
NYC&StL	CNJ	NYC&StL, Fostoria, Ohio, B&O, Cherry Run, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
NYC&StL	DL&W	" " " " " " " " " " " " Phillipsburg, N. J. DL&W
NYC&StL	LV	" " " " " " " " " " " " East Penn. Jct., Pa. L. V.
NYC&StL	CNJ	" Cleveland, Ohio, NYC, Youngstown, Ohio, P&LE, Connellsville, Pa., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ.
NYC&StL	CNJ	" Bellevue, Ohio, W&LE, Pittsburgh Jct., Ohio, P&WVa. " " " " " " " " " " " "
NYC&StL	CNJ	" Cleveland, Ohio. " " " " " " " " " " " " " " " "
NYC (C)	CNJ	NYC (C) Indianapolis, Ind., B&O, Cherry Run, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ
NYC (C)	DL&W	" " " " " " " " " " " " Phillipsburg, N. J. DL&W
NYC (C)	L. V.	" " " " " " " " " " " " East Penn Jct., Pa. L. V.
NYC (C)	CNJ	" Cincinnati, Ohio, C&O, Durbin, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
NYC (C)	CNJ	" " " " " " " " " " " " Waynesboro Union Station, Va., N&W, Hagerstown Jct., Md., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ
NYC (C)	CNJ	" Ivorydale, Ohio, N&W, Hagerstown Jct. Md., WM., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
NYC (C)	CNJ	" Galion, Ohio, Erie, Youngstown, Ohio, P&LE, Connellsville, Pa., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
NYC (C)	CNJ	" Cleveland, Ohio, NYC, " " " " " " " " " " " "
NYC (W)	CNJ	NYC (W) N. Judson, Ind. C&O, Durbin, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
NYC (W)	CNJ	" " " " " " " " " " " " Waynesboro Union Station, Va. N. W., Hagerstown Jct., Md., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ
NYC (W)	CNJ	" Youngstown, Ohio, P&LE Connellsville, Pa. W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
NYC (W)	CNJ	" Cleveland, Ohio, Erie, Youngstown, Ohio, P&LE Connellsville, Pa., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
Wabash	CNJ	Wabash, Toledo, Ohio, W&LE, Pittsburgh Jct., Ohio P&WVa. Connellsville, Pa. W. Md., " " " " " " " "

TARIFF AUTHORITY

B. T. Jones	Tariff 245-G I. C. C. 3356
B&O R. R.	I. C. C. A-4
B&O R. R.	" WL-10293
Erie R. R.	" A-6828
NYC&StL	" 4375
NYC RR.	" 5
NYC RR.	" 5554 (MC Series)
NYC RR.	" 2 (West OC Series)
Wabash	" 6170
DL&W	" 1
L. V. RR.	" 5

[fol. 697]

EXHIBIT No. 11

STATEMENT

Showing Detail of Presently Effective Typical Routes on Grain, in Carloads, From Chicago, Ill. to New York, N. Y. Via: Which Transit is Available at Hagerstown, Md. on Basis of Joint Through Rate from Origin to Destination Plus Out-of-Route or Back-Haul Charge

Origin Road	Destination Road	Route	Origin Road	Destination Road	Route
B&O C&O C&O Erie Erie	B&O B&O PRR PRR PRR	B&O RR. C&O Ry., Cincinnati, Ohio, B&O RR. C&O Ry., Richmond, Ind. P. RR. Erie RR., Youngstown, Ohio, P. RR. Erie RR. Transfer, Pa. P. RR.	PRR PRR PRR PRR PRR	PRR B&O B&O B&O B&O	P. RR. P. RR. Bellaire, Ohio, B&O RR. P. RR. Wheeling, W. Va. B&O RR. P. RR. Zanesville, Ohio B&O RR. P. RR. Akron, Ohio, B&O RR.
NYC&StL NYC (C) NYC (M) NYC (M) NYC (W) NYC (W)	PRR PRR B&O PRR PRR PRR	NYC&StL RR., Ft. Wayne, Ind. P. RR. NYC (C) Indianapolis, Ind. P. R. R. NYC (M) Toledo, Ohio, B&O RR. NYC (M) Toledo, Ohio, PRR. NYC (W) Hamlet, Ind. P. RR. NYC (W) North Judson, Ind. P. RR.	PRR PRR PRR PRR Wabash	B&O B&O B&O B&O P. RR.	P. RR. Lima, Ohio, B&O RR. P. RR. Mansfield, Ohio, B&O RR. P. RR. Columbus, Ohio, B&O RR. P. RR. Newark, Ohio, B&O RR. Wabash Ry. Toledo, Ohio, P. RR.

TARIFF AUTHORITY

Agent B. T. Jones—Tariff 245-G I. C. C. 3356
 B&O R. R. I. C. C. A-4
 B&O R. R. " WL-10293
 Erie R. R. " A-6828
 NYC&StL RR. " 4375
 NYC R. R. " 5
 NYC RR. " 5554 (M. C. Series)
 NYC RR. " 2 (West OC Series)
 P. RR. " 13
 Wabash Ry. " 6170

EXHIBIT No. 12

STATEMENT

Showing Detail of Presently Effective Typical Routes on Grain, in Carloads, From Decatur, Ill. to Freehold, N. J. Via Which Transit is Available at Hagerstown, Md., on Basis of Joint Through Rate from Origin to Destination Without Out-of-Route or Back-Haul Charge.

Origin Road	Destination Road	Route
B&O B&O B&O B&O B&O	CNJ CNJ CNJ CNJ CNJ	B&O (Via Hamilton, Ohio) Cherry Run, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ " Cincinnati, Ohio, C&O, Durbin, W. Va., W. Md., Shippensburg, Pa., " " " " " Waynesboro Union Station, Va., N&W, Hagerstown Jct., Md., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ " Cottage Grove, Ind., C&O, Durbin, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ " " " " Waynesboro Union Station, Va., N&W, Hagerstown Jct., Md., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ
IC IC	CNJ CNJ	IC Chicago, Ill., B&O, Cherry Run, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ " Indianapolis, Ind., B&O, " " " " " " " " " "
IC IC	CNJ CNJ	" Chicago, Ill., C&O, Durbin, W. Va. " " " " " " " " " " " " " Waynesboro Union Station, Va., N&W, Hagerstown, Jct., Md., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ
IC IC IC IC IC	CNJ CNJ CNJ CNJ CNJ	" " " " Ivorydale, Ohio. " " " " " " " " " " " " NYC Youngstown, Ohio, P&LE, Connellsville, Pa. W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ " " " Erie " " " " " " " " " " " " Creston, Ohio, W&LE, Pittsburgh Jct., Ohio, P&WVa., Connellsville, Pa., W.Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ " " " " " " " " " " " " " Bound Brook, N. J. "
IC IC IC IC IC	CNJ CNJ CNJ CNJ CNJ	" " " NYC&StL Cleveland, Ohio, " " " " " " " " " " Allentown, Pa. " " " " " " " " " " " " " " Bound Brook, N. J. " " " " Bellevue, " Allentown, Pa. " " " " Fremont, " " " " " " " " " " " " "
IC IC IC IC IC	CNJ CNJ CNJ CNJ CNJ	" " " " " " " " " " " " " " Bound Brook, N. J. " " " " Wabash Toldeo " Allentown, Pa. " " Champaign, Ill. " Bound Brook, N. J. "
IC IC IC IC IC	CNJ CNJ CNJ CNJ CNJ	" Gibson City, Ill. " Allentown, Pa. " " Tolona, Ill. " Bound Brook, N. J. " " " " " " " " " " " " " " Allentown, Pa. "
IC IC IC IC IC	CNJ CNJ CNJ CNJ CNJ	" " " " " " " " " " " " " " " " " " " Indianapolis,Ind.,NYC&StL Cleveland,Ohio,W&LE, " Allentown, Pa. " " " " Bellevue, " Bound Brook, N. J. "
IC IC IC IC IC	CNJ CNJ CNJ CNJ CNJ	" Fremont, " " " " " " " " " " " " " " Peoria, Ill. "
IC IC IC	CNJ CNJ CNJ	" Fremont, "
IC IC IC	CNJ CNJ CNJ	" "

Origin Road	Destination Road	Route
IT	CNJ	IT, Springfield, Ill., B&O, Cherry Run, W. Va., W. Md. Shippensburg, Pa., Reading, Allentown, Pa. CNJ
IT	CNJ	IT Peoria, Ill., CRI&P Chicago, Ill., B&O, Cherry Run, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
IT	CNJ	IT Peoria, Ill. NYC(C) Cincinnati, Ohio, B&O, Cherry Run, W. Va., W. Md., " " " " " "
IT	CNJ	IT Bloomington, Ill. " " " " " " " " " " " "
IT	CNJ	IT Hillery, Ill. " " " " " " " " " " " "
IT	CNJ	IT Mackinaw, Ill. " " " " " " " " " " " "
IT	CNJ	IT Peoria, Ill., NYC&StL Fostoria, Ohio, " " " " " " " " " " " "
IT	CNJ	IT Bloomington, Ill. " " " " " " " " " " " "
IT	CNJ	IT Bloomington, Ill. " " " C&O Durbin, W. Va. " " " " " " " " " "
IT	CNJ	IT Peoria, " " " " " " " " " " " "
IT	CNJ	IT Bloomington, " " Muncie, Ind. " " " " " " " " " " " "
IT	CNJ	IT Peoria, " " " " " " " " " " " "
IT	CNJ	IT " " CRI&P, Chicago, Ill. " " " " " " " " " " " "
IT	CNJ	IT Bloomington, " NYC (C), Cincinnati, Ohio, " " " " " " " " " " " "
IT	CNJ	IT Hillery, " NYC (C) " " " " " " " " " " " "
IT	CNJ	IT Mackinaw, " " " " " " " " " " " " " " " "
IT	CNJ	IT Peoria, " " " " " " " " " " " " " " " "
IT	CNJ	IT " " CRI&P Chicago, Ill, C&O Waynesboro Union Station, Va., N&W, Hagerstown Jct., Md., W. Md., Shippensburg, Pa. Reading, Allentown, Pa. CNJ
IT	CNJ	IT Bloomington, Ill., NYC (C) Cincinnati, Ohio, C&O Waynesboro Union Station, Va., N&W, Hagerstown Jct., Md., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ
IT	CNJ	IT Hillery, " NYC (C) Cincinnati, Ohio, C&O, Waynesboro Union Station, Va., N&W, Hagerstown Jct., Md., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ
IT	CNJ	IT Mackinaw, " NYC (C) Cincinnati, Ohio, C&O, Waynesboro, Union Station, Va., N&W, Hagerstown Jct., Md., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
IT	CNJ	IT Peoria, " NYC (C) Cincinnati, Ohio, C&O, Waynesboro Union Station, Va., N&W, Hagerstown Jct., Md., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
IT	CNJ	IT Peoria, Ill., NYC&StL, Cleveland, Ohio, W&LE, Pittsburgh Jct., Ohio, P&WVa., Connellsville, Pa., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ.
IT	CNJ	IT " " " Bellevue, " " " " " " " " " " " "
IT	CNJ	IT " " " Fremont, " " " " " " " " " " " "
PRR.	CNJ	PRR Indianapolis, Ind., NYC(C) Cincinnati, Ohio, C&O, Durbin, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ.
PRR.	CNJ	" " " " " " " " " " " " " " " "
PRR.	PRR.	Waynesboro, Union Station, Va., N&W, Hagerstown Jct., Md., W. Md., Shippensburg, Pa., (Reading, Allentown, Pa. CNJ
Wab.	CNJ	Direct.
Wab.	CNJ	Wab. Toledo, Ohio, W&LE, Pittsburgh Jct., Ohio, P&WV, Connellsville, Pa., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ
		" " " " " " " " " " " " " " " "
		Bound Brook, N. J. CNJ

TARIFF AUTHORITY

Agent B. T. Jones 245-G I. C. C. 3356

B&O R. R.

I. C. C. A-4

B&O R. R.

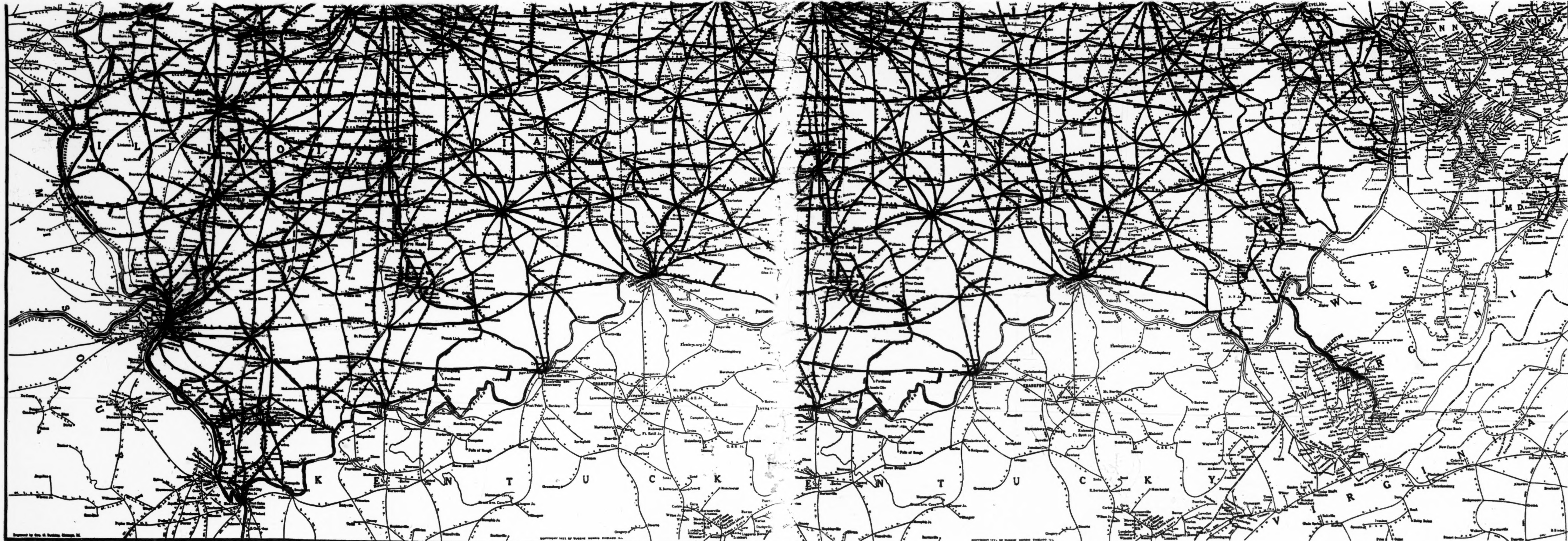
I. C. C. WL-10293

P. R. R.

I. C. C. 13

Wabash Ry.

I. C. C. 6170.



[fol. 700]

EXHIBIT No. 13

STATEMENT

Showing Detail of Presently Effective Typical Routes on Grain, in Carloads, from Decatur, Ill., to Freehold, N. J. Via: Which Transit is Available at Hagerstown, Md., on Basis of Joint Through Rate From Origin to Destination Plus Out of Route or Back-Haul Charge.

Origin Road	Destination Road	Route	Origin Road	Destination Road	Route
B&O	PRR	B&O Akron, Ohio, P. R. R.	B&O	PRR	B&O Newark, Ohio, P. R. R.
B&O	PRR	" Bellaire, Ohio, P. R. R.	B&O	PRR	" Tiffin, Ohio, P. R. R.
B&O	PRR	" Wheeling, W. Va. P. R. R.	B&O	PRR	" Toledo, Ohio, P. R. R.
B&O	PRR	" Cincinnati, Ohio, P. R. R.	B&O	PRR	" Washington C. H. Ohio, P. R. R.
B&O	PRR	" Columbus, Ohio, P. R. R.	B&O	PRR	" Dayton, Ohio, P. R. R.
B&O	PRR	" Hamilton, Ohio, P. R. R.	I. C.	PRR	I. C. Chicago, Ill. P. R. R.
B&O	PRR	" Indianapolis, Ind. P. R. R.	Wabash	P. RR.	Wab. Logansport, Ind. P. R. R.
B&O	PRR	" Mansfield, Ohio, P. R. R.	Wabash	P. RR.	" Toledo, Ohio, P. R. R.

TARIFF AUTHORITY

Agent B. T. Jones Tariff 245-G I. C. C. 3356

B&O R.R. I. C. C. A-4

B&O R. R. I. C. C. WL 10293

Wabash Ry. I. C. C. 6170.

EXHIBIT No. 7

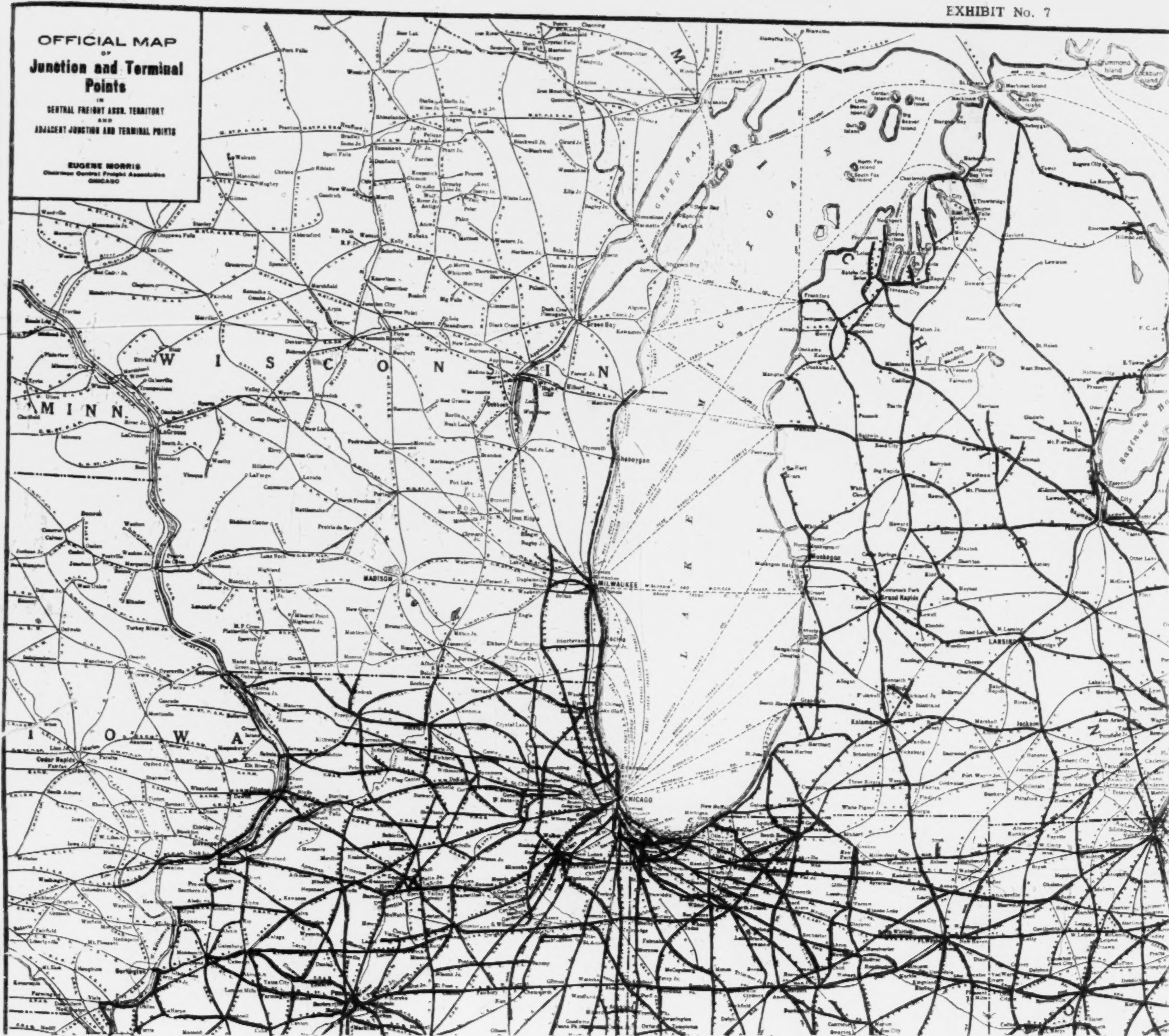


EXHIBIT No. 7

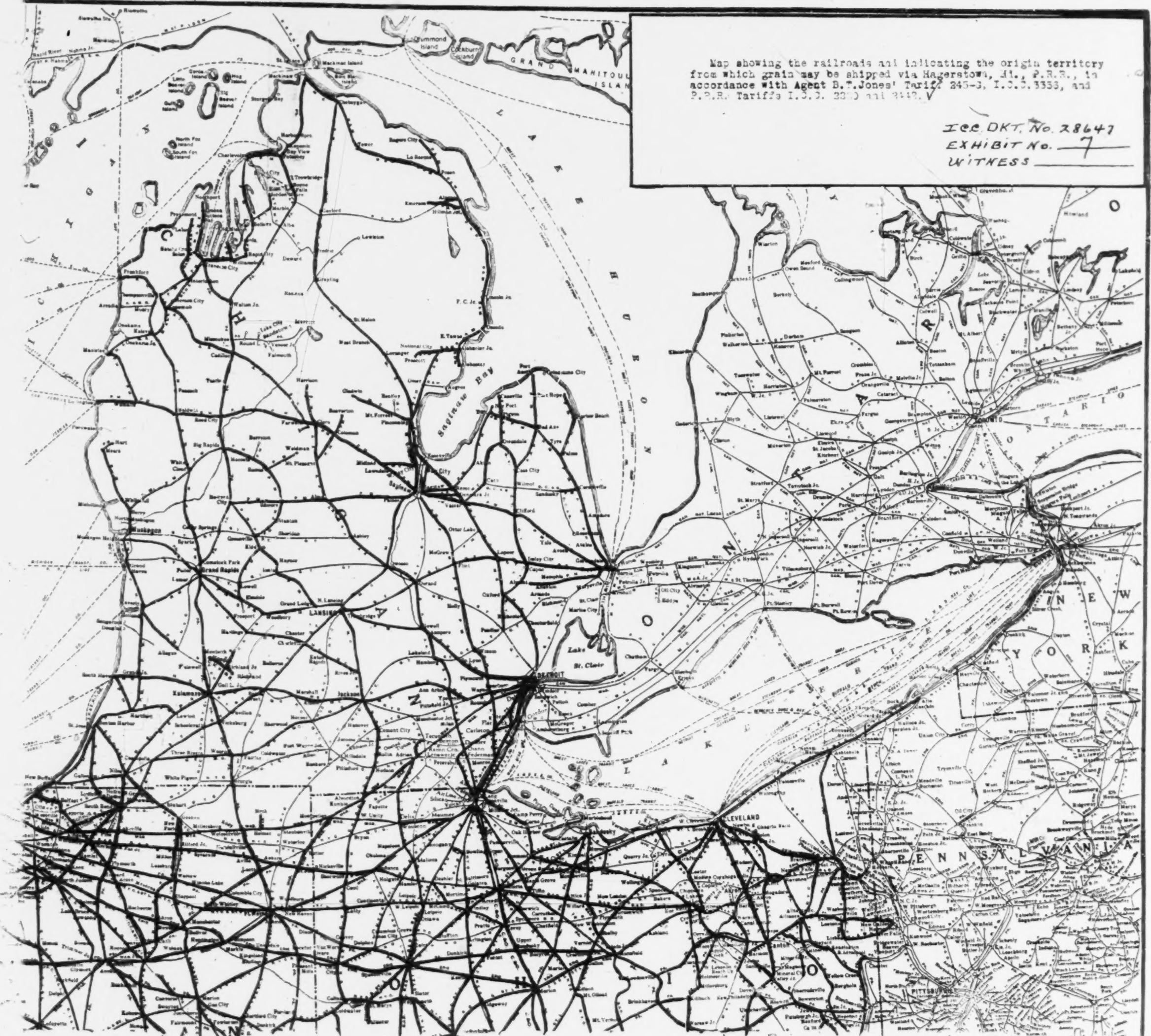


EXHIBIT No. 8

OFFICIAL MAP
of
Junction and Terminal
Points
in
CENTRAL FREIGHT ASSN. TERRITORY
AND
ADJACENT JUNCTION AND TERMINAL POINTS

EUGENE MORRIS
Chairman Central Freight Association
CHICAGO

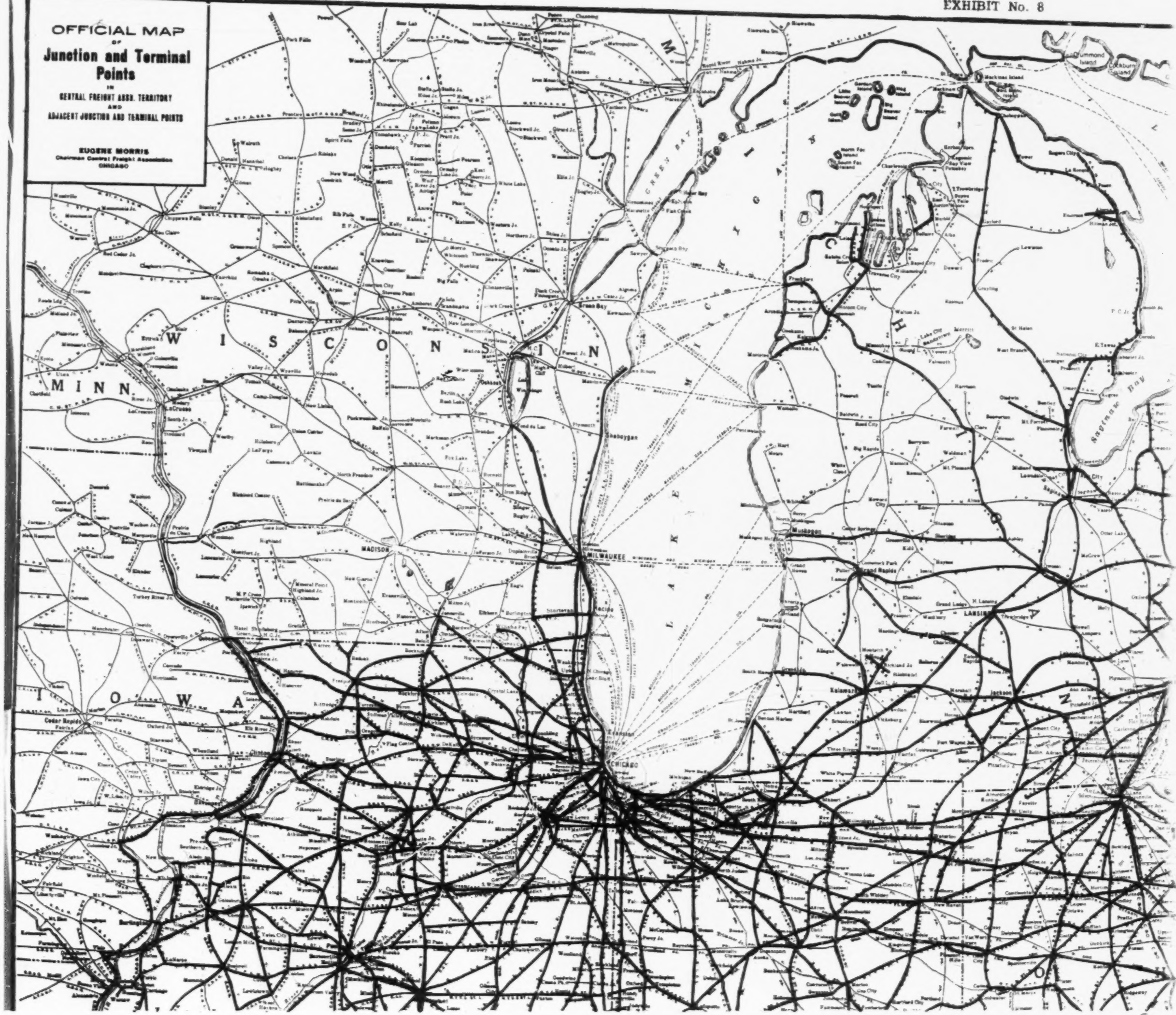


EXHIBIT No. 8

Map showing the railroads and indicating the origin territory from which grain may be shipped via Hagerstown, Md., Western Maryland Ry., in accordance with Agent S.T. Jones' Tariff 245-3, I.C.C. 3355, and Western Maryland Ry. Tariff I.C.C. 8332.

ICC DKT. No. 28647
EXHIBIT No. 8
WITNESS

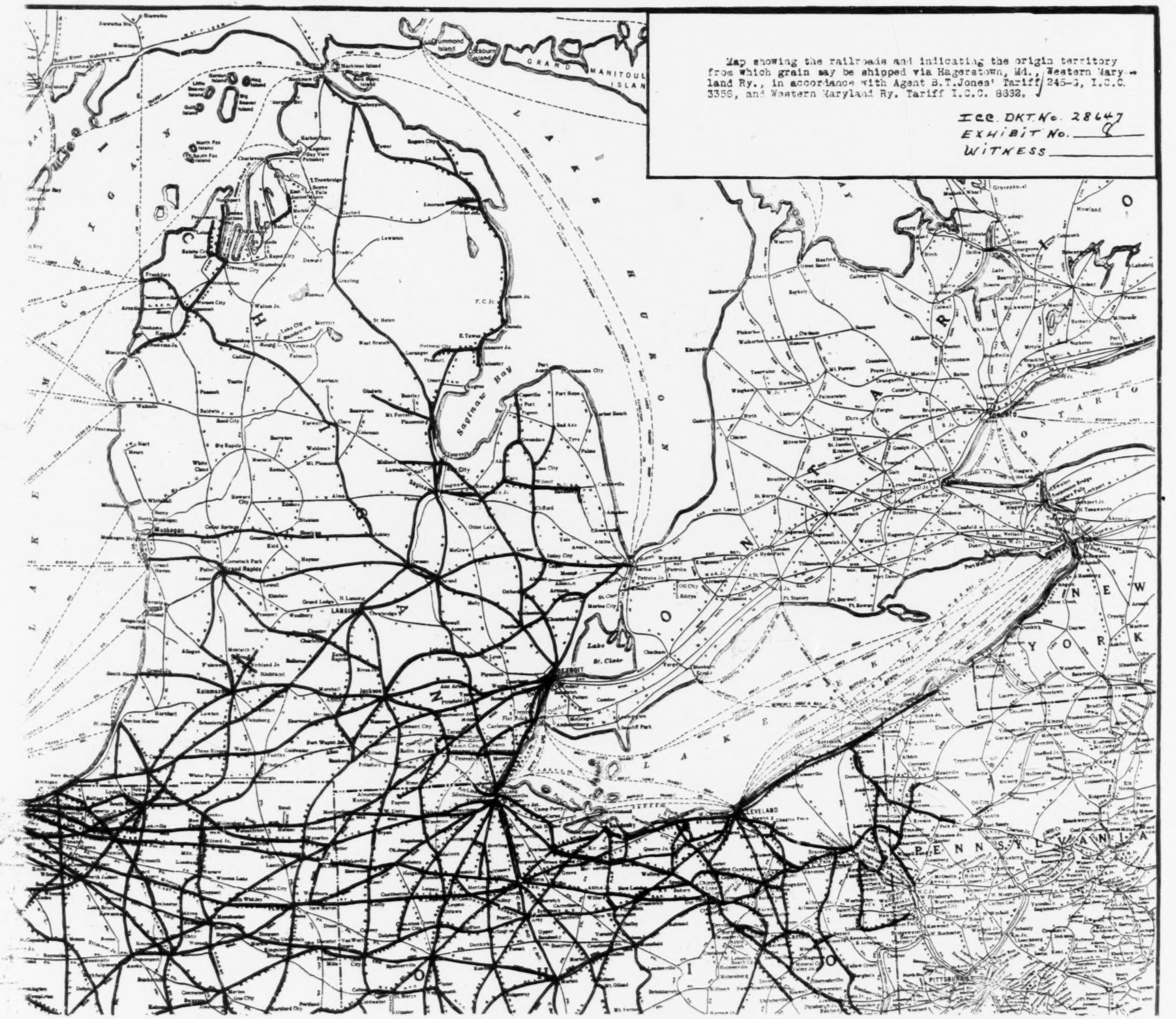


EXHIBIT No. 9

Map Showing Trunk Line Destination Territory to Which Transit is Available at Hagerstown, Md. per W.M.Ry. 100 8662 Without Out of Route or Back Haul Charge on Grain and Grain Products Originating in Central Freight Association and Western Trunk Line Territories. (Routes per B & O R.R. 100 A-4.)

LEGEND:

----- Indicates Available Destination Territory.

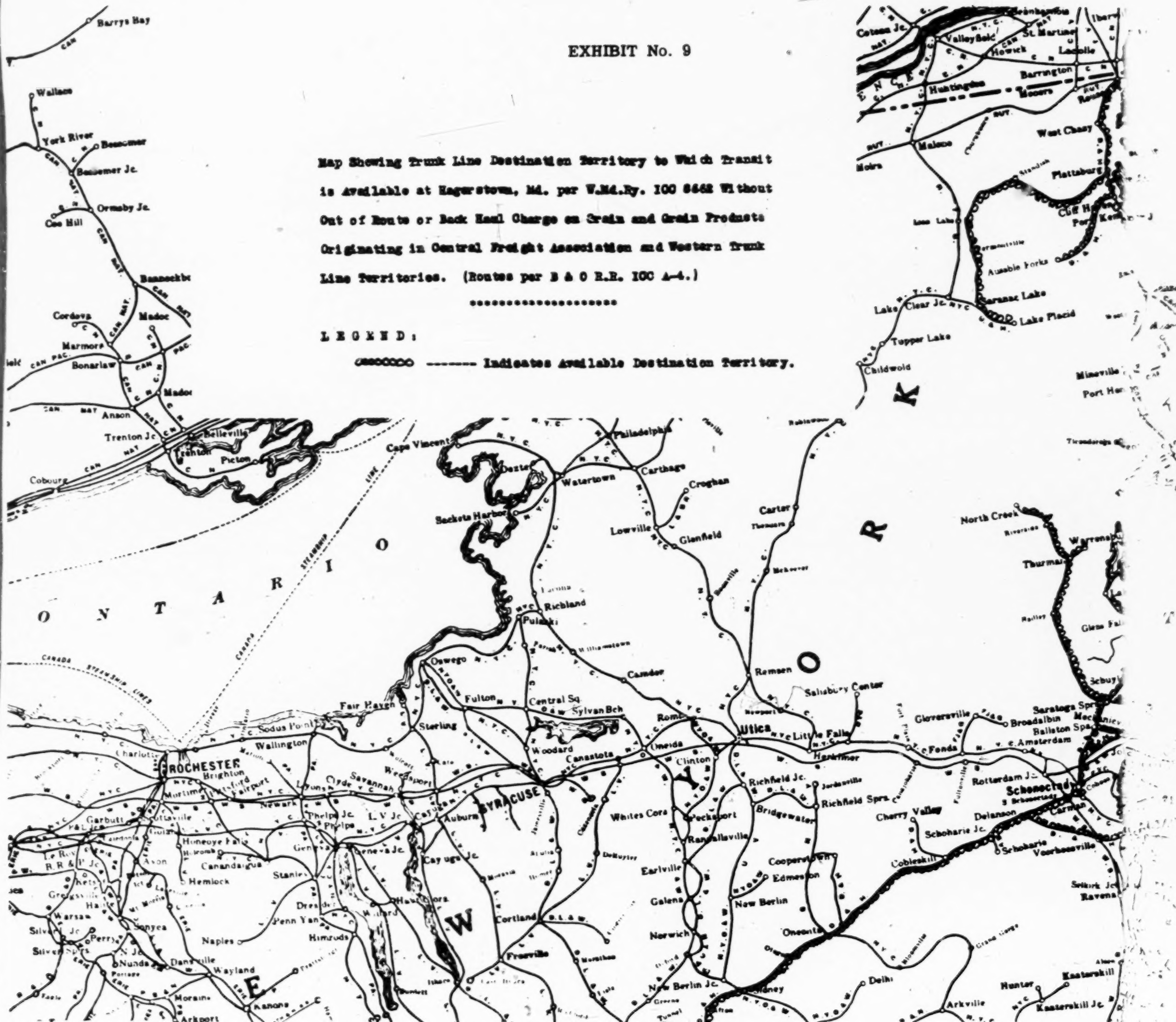


EXHIBIT No. 9

Map Showing Trunk Line Destination Territory to Which Transit is Available at Hagerstown, Md. per W.M.Ry. 100 8662 Without Out of Route or Back Haul Charge on Grain and Grain Products Originating in Central Freight Association and Western Trunk Line Territories. (Routes per B & O R.R. 100 A-4.)

LEGEND:

----- Indicates Available Destination Territory.



[fol. 700]

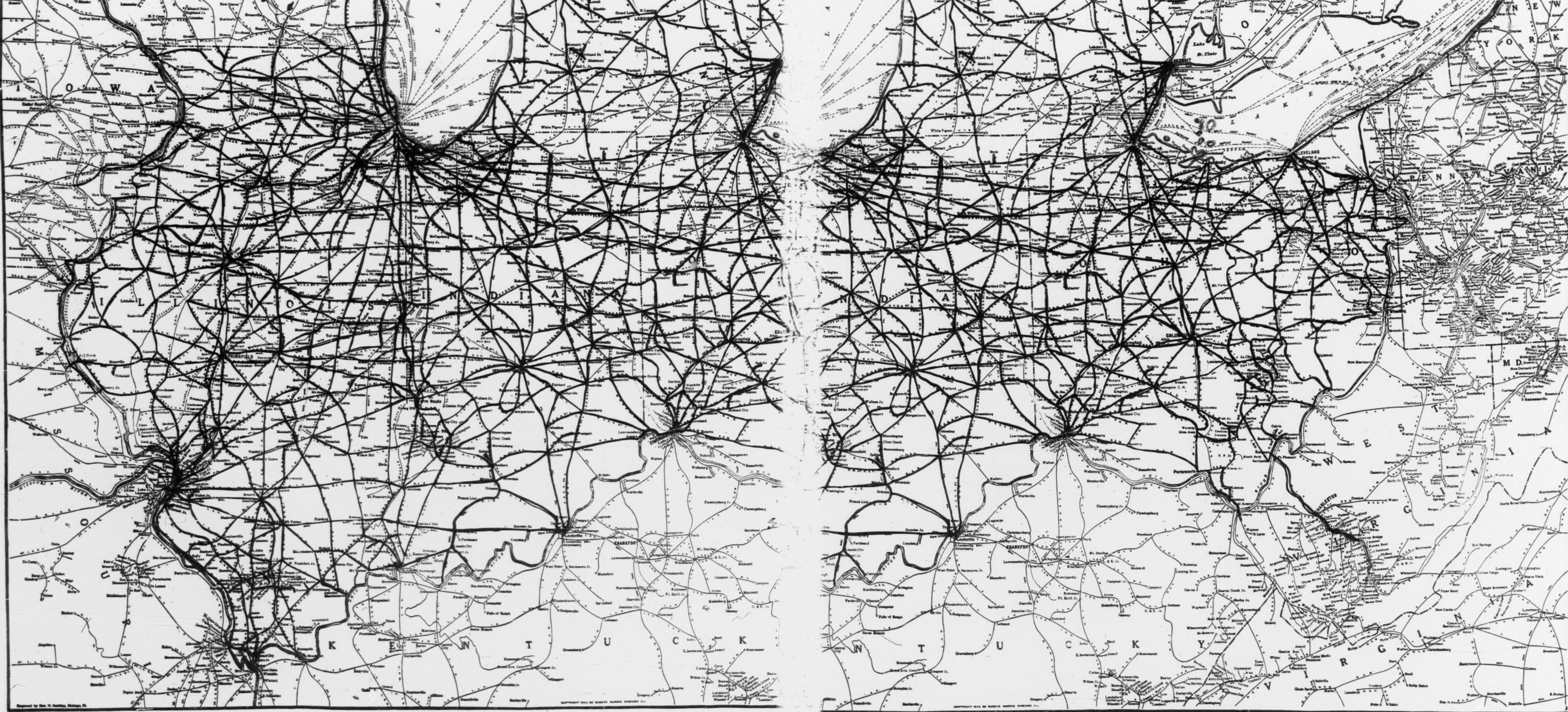
EXHIBIT No. 13
STATEMENT

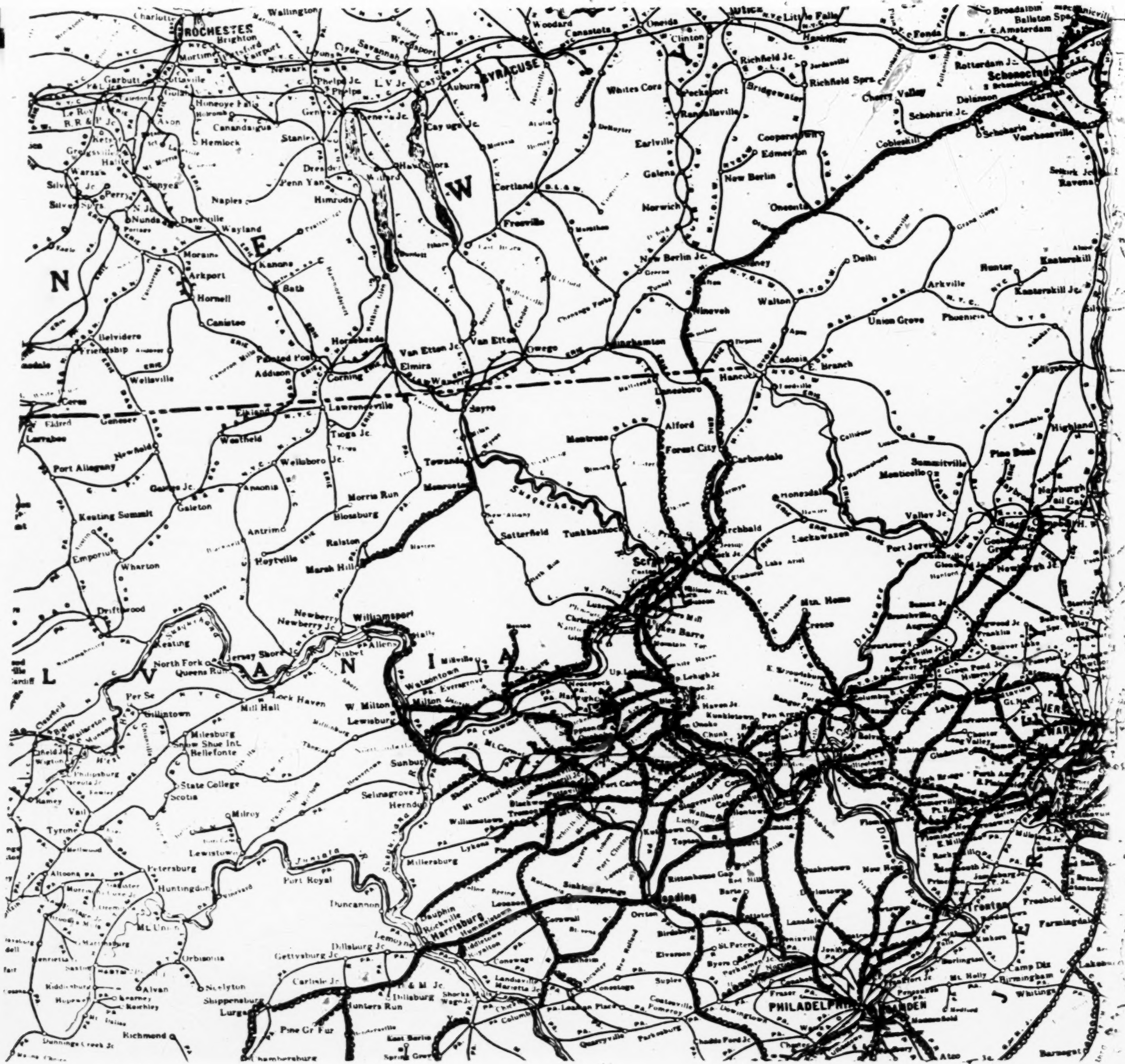
Showing Detail of Presently Effective Typical Routes on Grain, in Carloads, from Decatur, Ill., to Freehold, N. J. Via: Which Transit is Available at Hagerstown, Md., on Basis of Joint Through Rate From Origin to Destination Plus Out of Route or Back-Haul Charge.

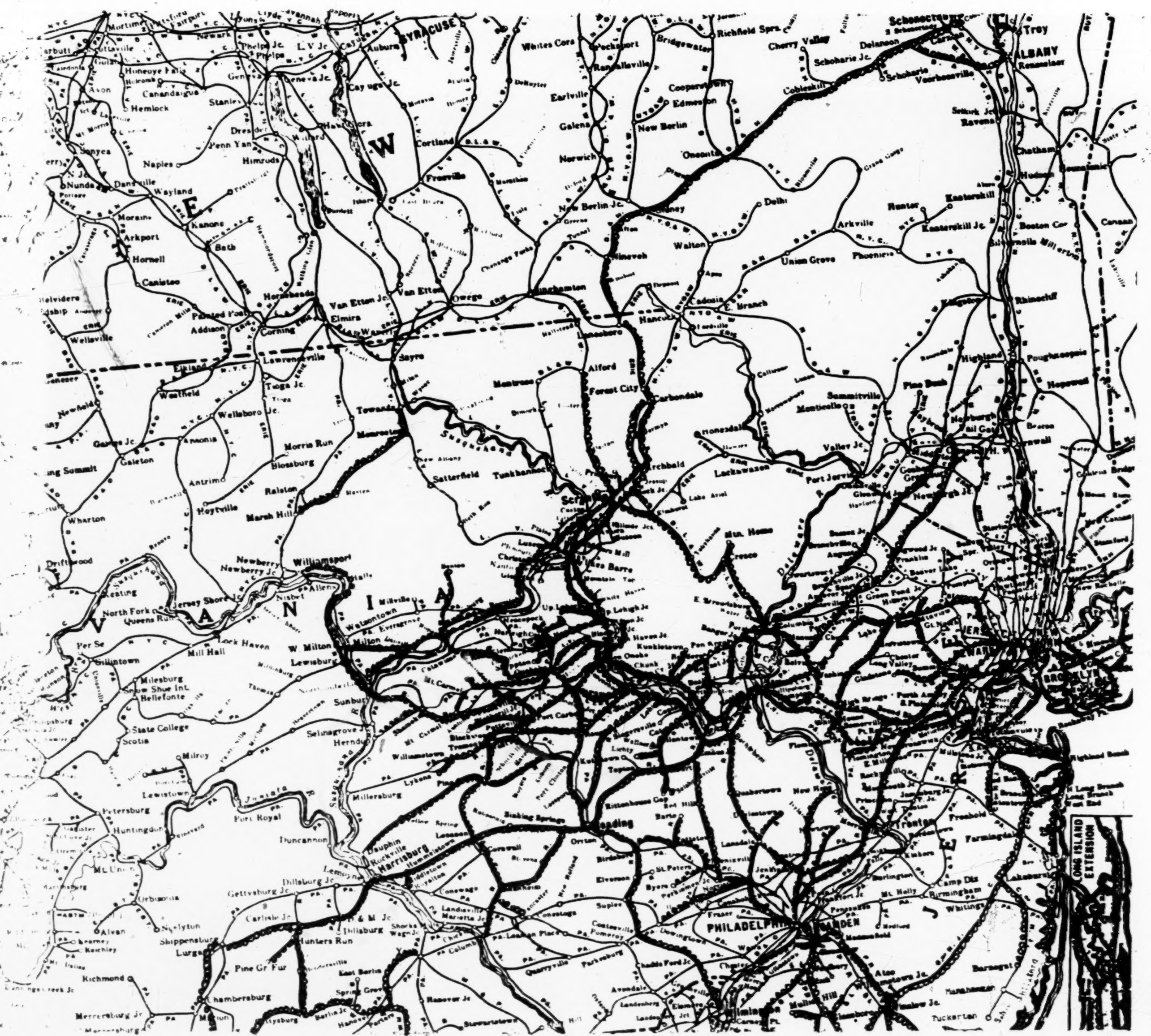
Origin Road	Destination Road	Route	Origin Road	Destination Road	Route
B&O	PRR	B&O Akron, Ohio, P. R. R.	B&O	PRR	B&O Newark, Ohio, P. R. R.
B&O	PRR	" Bellaire, Ohio, P. R. R.	B&O	PRR	" Tiffin, Ohio, P. R. R.
B&O	PRR	" Wheeling, W. Va. P. R. R.	B&O	PRR	" Toledo, Ohio, P. R. R.
B&O	PRR	" Cincinnati, Ohio, P. R. R.	B&O	PRR	" Washington C. H. Ohio, P. R. R.
B&O	PRR	" Columbus, Ohio, P. R. R.	B&O	PRR	" Dayton, Ohio, P. R. R.
B&O	PRR	" Hamilton, Ohio, P. R. R.	I. C.	PRR	I. C. Chicago, Ill. P. R. R.
B&O	PRR	" Indianapolis, Ind. P. R. R.	Wabash	P. RR.	Wab. Logansport, Ind. P. R. R.
B&O	PRR	" Mansfield, Ohio, P. R. R.	Wabash	P. RR.	" Toledo, Ohio, P. R. R.

TARIFF AUTHORITY

Agent B. T. Jones Tariff 245-G I. C. C. 3356
 B&O R.R. I. C. C. A-4
 B&O R. R. I. C. C. WL 10293
 Wabash Ry. I. C. C. 6170.







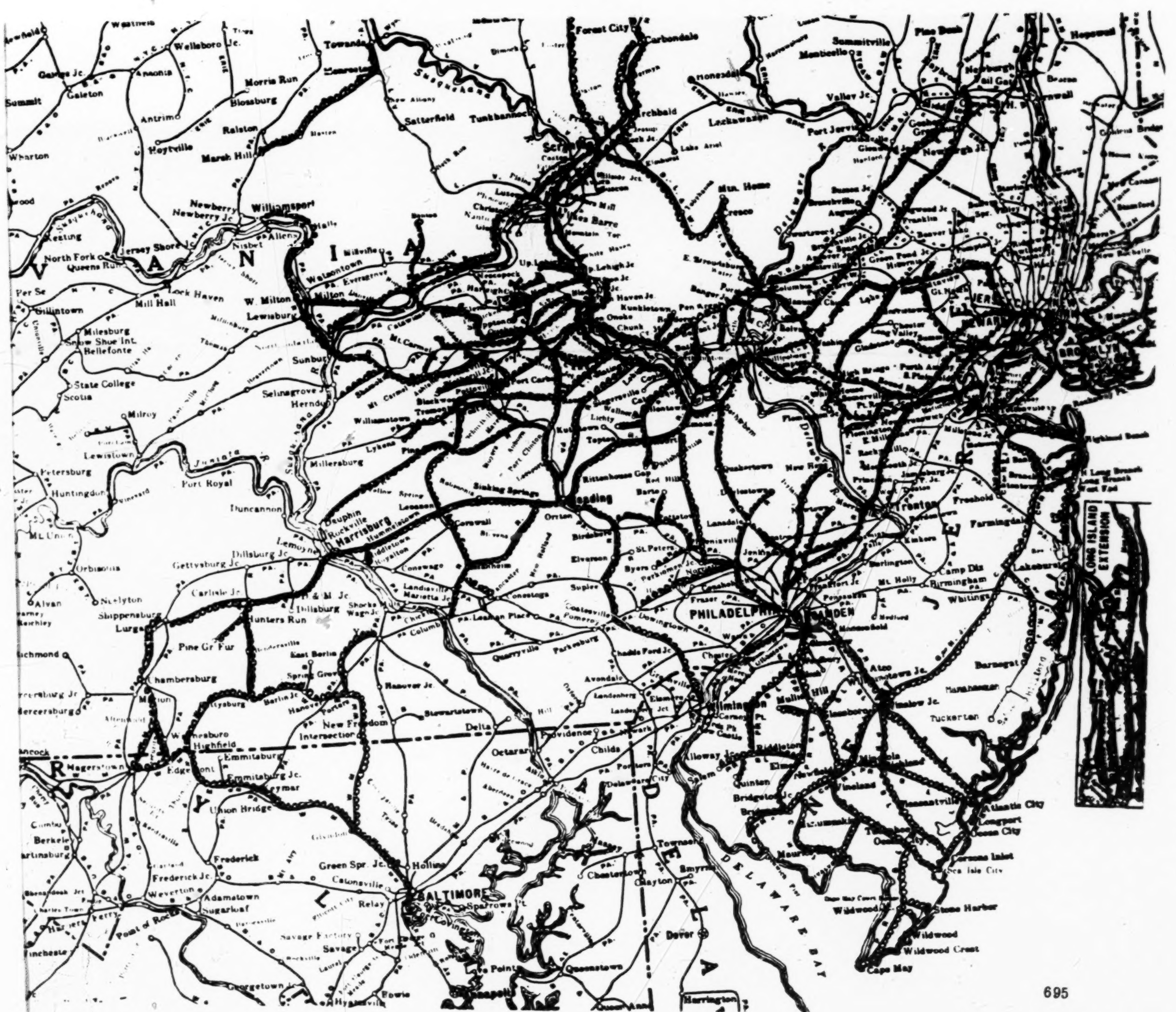


EXHIBIT No. 14
STATEMENT

Showing Detail of Presently Effective Typical Routes on Grain, in Carloads, from Peoria, Ill., to Salisbury, Md. via Which Transit is Available at Hagerstown, Md. on Basis of Joint Through Rate from Origin to Destination Plus Out of Route or Back Haul Charge.

Origin Road	Destination Road	Routes						Origin Road	Destination Road	Routes					
Alton	P. RR.	Alton	Springfield, Ill.	B&O	Akron, Belleaire, Wheeling, Cincinnati, Columbus,	Ohio	P. R. R.	CI&M	P. RR.	CI&M	Taylorville, Ill.	B&O	Bellaire, Wheeling, Cincinnati, Columbus, Hamilton		
Alton,	P. RR.	Alton	Springfield, Ill.	B&O	Decatur, Hamilton, Indianapolis, Mansfield, Newark,	Ill. Ohio Ind. Ohio	"	CI&M	P. RR.	CI&M	Taylorville, Ill.	B&O	Indianapolis, Mansfield, Newark, Seymour, Tiffin,		
Alton,	P. RR.	Alton	Springfield, Ill.	B&O	Seymour, Tiffin, Toledo, Vincennes, Washington CH, Toledo, N. Y. P. R. R.	Ind. Ohio Ohio Ind. Ohio	" PM-E. Buffalo,	CI&M	P. RR.	CI&M	Taylorville, Ill.	B&O	Toledo, Vincennes, Washington, Akron, Avilla, Bellaire, Wheeling,		
CI&M	P. RR.	CI&M	Springfield, Ill.	B&O	Akron, Belleaire, Wheeling, Cincinnati, Columbus,	Ohio	P. RR.	C&NW	"	C&NW	Chicago, Ill.	B&O	Cincinnati, Mansfield, Newark, New Cast, Tiffin,		
CI&M	P. RR.	CI&M	Springfield, Ill.	B&O	Decatur, Hamilton, Indianapolis, Mansfield, Newark,	Ill. Ohio Ind. Ohio	P. R. R.	C&NW	P. RR.	C&NW	Chicago, Ill.	B&O	Toledo,		
CI&M	P. RR.	CI&M	Springfield, Ill.	B&O	Seymour, Tiffin, Toledo, Vincennes, Washington CH,	Ind. Ohio Ind. Ohio	P. R. R.	CB&Q	P. RR.	CB&Q	Chicago, Ill.	B&O	Akron, Avilla, Bellaire,		
CI&M	P. RR.	CI&M	Springfield, Ill.	B&O	Seymour, Tiffin, Toledo, Vincennes, Washington CH,	Ind. Ohio Ind. Ohio	P. R. R.	CB&Q	P. RR.	CB&Q	Chicago, Ill.	B&O	Wheeling, Cincinnati, Mansfield, Newark, New Cast		
CI&M	P. RR.	CI&M	Springfield, Ill.	Wabash	Logansport, Ft. Wayne, Logansport, Ft. Wayne, Akron,	Ind. Ohio	P. R. R.	CB&Q	P. RR.	CB&Q	Chicago, Ill.	B&O	Tiffin, Toledo,		
			Taylorville, Ill.					CRI&P		CRI&P	Chicago,	B&O	Akron, Avilla, Bellaire,		

EXHIBIT No. 14
STATEMENT

Showing Detail of Presently Effective Typical Routes on Grain, in Carloads, from Peoria, Ill., to Salisbury, Md. via Which Transit is Available at Hagerstown, Md. on Basis of Joint Through Rate from Origin to Destination Plus Out of Route or Back Haul Charge.

Destination Road	Routes							Origin Road	Destination Road	Routes						
P. R.R.	Alton	Springfield,	Ill.	B&O	Akron, Bellaire,	Ohio Ohio	P. R. R.	CI&M	P. RR	CI&M	Taylorville,	Ill.	B&O	Bellaire, Wheeling,	Ohio W. Va.	P. R. R.
"	"	"	"	"	Wheeling,	W. Va.	"	"	"	"	"	"	"	Cincinnati,	Ohio	"
"	"	"	"	"	Cincinnati,	Ohio	"	"	"	"	"	"	"	Columbus,	Ohio	"
"	"	"	"	"	Columbus,	Ohio	"	"	"	"	"	"	"	Hamilton,	Ohio	"
P. R.R.	Alton	Springfield,	Ill.	B&O	Decatur, Hamilton,	Ill. Ohio	"	CI&M	P. RR.	CI&M	Taylorville,	Ill.	B&O	Indianapolis, Mansfield,	Ind. Ohio	P. R. R.
"	"	"	"	"	Indianapolis,	Ind.	"	"	"	"	"	"	"	Newark,	Ohio	"
"	"	"	"	"	Mansfield,	Ohio	"	"	"	"	"	"	"	Seymour,	Ind.	"
"	"	"	"	"	Newark,	Ohio	"	"	"	"	"	"	"	Tiffin,	Ohio	"
P. R.R.	Alton	Springfield,	Ill.	B&O	Seymour,	Ind.	"	CI&M	P. RR.	CI&M	Taylorville,	Ill.	B&O	Toledo, Vincennes,	Ohio Ind.	P. R. R.
"	"	"	"	"	Tiffin,	Ohio	"	"	"	"	"	"	"	Washington CH,	O.	"
"	"	"	"	"	Toledo,	Ohio	"	"	"	"	"	"	"	Akron,	Ohio	"
"	"	"	"	"	Vincennes,	Ind.	"	C&NW	"	C&NW	Chicago,	Ill.	"	Avilla,	Ind.	"
"	"	"	"	"	Washington CH,	O.	"	"	"	"	"	"	"	Bellaire,	Ohio	"
"	"	"	"	"	Toledo, N. Y. P. R. R.	Ohio	PM-E. Buffalo,	"	"	"	"	"	"	Wheeling,	W. Va.	"
P. R.R.	CI&M	Springfield,	Ill.	B&O	Akron, Bellaire,	Ohio Ohio	P. R.R.	C&NW	"	C&NW	Chicago,	Ill.	B&O	Cincinnati, Mansfield,	Ohio	P. R. R.
"	"	"	"	"	Wheeling,	W. Va.	"	"	"	"	"	"	"	Newark,	"	"
"	"	"	"	"	Cincinnati,	Ohio	"	"	"	"	"	"	"	New Castle,	Pa.	"
"	"	"	"	"	Columbus,	Ohio	"	"	"	"	"	"	"	Tiffin,	Ohio	"
P. R.R.	CI&M	Springfield,	Ill.	B&O	Decatur, Hamilton,	Ill. Ohio	P. R. R.	C&NW	P. RR.	C&NW	Chicago,	Ill.	B&O	Toledo,	Ohio,	P. R. R.
"	"	"	"	"	Indianapolis,	Ind.	"	"	"	"	"	"	"	Akron,	Ohio	P. R. R.
"	"	"	"	"	Mansfield,	Ohio	"	CB&Q	"	CB&Q	Chicago,	Ill.	B&O	Avilla, Bellaire,	Ind. Ohio	"
"	"	"	"	"	Newark,	Ohio	"	"	"	"	"	"	"	"	"	"
P. R.R.	CI&M	Springfield,	Ill.	B&O	Seymour,	Ind.	P. R. R.	CB&Q	P. RR.	CB&Q	Chicago,	Ill.	B&O	Wheeling, Cincinnati,	W. Va. Ohio	P. R. R.
"	"	"	"	"	Tiffin,	Ohio	"	"	"	"	"	"	"	Mansfield,	Ohio	"
"	"	"	"	"	Toledo,	Ind.	"	"	"	"	"	"	"	Newark,	Ohio	"
"	"	"	"	"	Vincennes,	O.	"	"	"	"	"	"	"	New Castle,	Pa.	"
"	"	"	"	"	Washington CH,	O.	"	"	"	"	"	"	"	"	"	"
P. R.R.	CI&M	Springfield,	Ill.	Wabash	Logansport, Ft. Wayne,	Ind. "	P. R. R.	CB&Q	P. RR.	CB&Q	Chicago,	Ill.	B&O	Tiffin, Toledo,	Ohio Ohio	P. R. R.
"	"	Taylorville,	Ill.	"	Logansport,	"	"	"	"	"	"	"	PRR	"	"	"
"	"	"	"	"	Ft. Wayne,	Ohio	"	CRI&P	"	CRI&P	Chicago,	"	B&O	Akron,	Ohio	"
"	"	"	"	"	Akron,	"	"	"	"	"	"	"	B&O	Avilla, Bellaire,	Ind. Ohio	"

Origin Road	Destination Road	Routes						Origin Road	Destination Road	Routes					
CRI&P	P. RR.	CRI&P	Chicago,	Ill.	B&O	Wheeling, Cincinnati, Mansfield, Newark, New Castle,	W. Va. Ohio Ohio Pa.	P. R. R.	I. T.	P. R. R.	I. T.	Springfield,	Ill.	B&O	Indianapolis, Mansfield, Newark, Seymour, Tiffin,
"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
CRI&P	P. RR.	CRI&P	Chicago,	Ill.	B&O	Tiffin, Toledo, Akron, Avilla, Bellaire,	Chio Ohio Ohio Ind. Ohio	P. R. R.	I. T.	P. R. R.	I. T.	Springfield,	Ill.	B&O	Toledo, Vincennes, Washington CH Akron, Bellaire,
"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
I. C.	"	I. C.	"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
I. C.	P. RR.	I. C.	Chicago,	Ill.	B&O	Wheeling, Cincinnati, Mansfield, Newark, New Castle,	W. Va. Ohio Ohio Ohio Pa.	P. R. R.	I. T.	P. R. R.	I. T.	Decatur,	Ill.	B&O	Wheeling, Cincinnati, Columbus, Hamilton, Indianapolis,
"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
I. C.	P. RR.	I. C.	Chicago,	Ill.	B&O	Tiffin, Toledo, Akron, Bellaire, Wheeling,	Ohio Ohio Ohio Ohio W. Va.	P. R. R.	I. T.	P. R. R.	I. T.	Decatur,	Ill.	B&O	Mansfield, Newark, Tiffin, Toledo, Washington CH
"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
I. C.	P. RR.	I. C.	Indianapolis, Ind.	Ind.	B&O	Cincinnati, Mansfield, Newark, New Castle, Tiffin,	Ohio Ohio Ohio Pa. Ohio	P. R. R.	I. T.	P. R. R.	I. T.	Peoria,	Ill.	CRI&P	Chicago, Ill. I
"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
I. C.	P. RR.	I. C.	Indianapolis, Ind.	Ind.	B&O	Toledo,	Ohio	P. R. R.	I. T.	P. R. R.	I. T.	Peoria,	Ill.,	CRI&P	Chicago, Ill., I
"	"	"	Chicago,	Ill.	P. RR.	"	"	"	"	"	"	"	"	"	"
"	"	"	Decatur,	P. RR.	"	"	"	"	"	"	"	"	"	"	"
"	"	"	Indianapolis, Ind.	P. RR.	"	"	"	"	"	"	"	"	"	"	"
I. T.	"	I. T.	Springfield,	Ill.	B&O	Akron,	Ohio,	P. R. R.	"	"	"	"	"	"	"
I. T.	P. RR.	I. T.	Springfield,	Ill.	B&O	Bellaire, Wheeling, Cincinnati, Columbus, Hamilton,	Ohio W. Va. Ohio Ohio Ohio	P. R. R.	I. T.	P. R. R.	I. T.	Bloomington	Ill.	NYC(C), Cincinnati, O. P	
"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"

Routes						Origin Road	Destination Road	Routes										
RI&P	Chicago,	Ill.	B&O	Wheeling, Cincinnati, Mansfield, Newark, New Castle,	W. Va. Ohio Ohio Ohio Pa.	P. R. R.	I. T.	P. R. R.	I. T.	Springfield,	Ill.	B&O	Indianapolis, Mansfield, Newark, Seymour, Tiffin,	Ind. Ohio Ohio Ind. Ohio	P. R. R.			
RI&P	Chicago,	Ill.	B&O	Tiffin, Toledo, Akron, Avilla, Bellaire,	Ohio Ohio Ohio Ind. Ohio	P. R. R.	I. T.	P. R. R.	I. T.	Springfield,	Ill.	B&O	Toledo, Vincennes, Washington CH, Akron, Bellaire,	Ohio Ind. Ohio Ohio Ohio	P. R. R.			
C.										Decatur,								
C.	Chicago,	Ill.	B&O	Wheeling, Cincinnati, Mansfield, Newark, New Castle,	W. Va. Ohio Ohio Ohio Pa.	P. R. R.	I. T.	P. R. R.	I. T.	Decatur,	Ill.	B&O	Wheeling, Cincinnati, Columbus, Hamilton, Indianapolis,	W. Va. Ohio Ohio Ohio Ind.	P. R. R.			
C.	Chicago,	Ill.	B&O	Tiffin, Toledo, Akron, Bellaire, Wheeling,	Ohio Ohio Ohio Ohio W. Va.	P. R. R.	I. T.	P. R. R.	I. T.	Decatur,	Ill.	B&O	Mansfield, Newark, Tiffin, Toledo, Washington CH,	Ohio Ohio Ohio Ohio Ohio	P. R. R.			
C.	Indianapolis, Ind.		B&O	Cincinnati, Mansfield, Newark, New Castle, Tiffin,	Ohio Ohio Ohio Pa. Ohio	P. R. R.	I. T.	P. R. R.	I. T.	Peoria,	Ill.	CRI&P	Chicago, Ill. Akron, Avilla, Bellaire, Wheeling, Cincinnati,	Ill. Ohio Ind. Ohio W. Va. Ohio	PRR " " " " " "			
C.	Indianapolis, Ind. Chicago, Ill. Decatur, " Indianapolis, Ind.	B&O P. RR. P. RR. P. RR.	Toledo, Ohio Ohio Ohio	P. R. R. P. R. R. P. R. R. P. R. R.	I. T. " " "	P. R. R. " " "	I. T. " " "	P. R. R. " " "	I. T. " " "	Peoria, " " "	Ill., " " "	CRI&P	Chicago, Ill. " " "	Ill., " " "	B&O	Mansfield, Newark, New Castle, Tiffin, Toledo,	Ohio Ohio Pa. Ohio Ohio	PRR PRR " " "
T.	Springfield,	Ill.	B&O	Akron,	Ohio,	P. R. R.	I. T.	P. R. R.	I. T.	Bloomington	Ill.	NYC(C),	Cincinnati, O. Akron, Bellaire, Wheeling, Columbus, Mansfield,	O. O. W. Va. O. O.	PRR " " " " " "			

Origin Road	Destination Road	Routes							
I. T.	P. R. R.	I. T.	Bloomington, Ill.	NYC (C)	Cincinnati, Ohio	B&O	Newark, Ohio	P. R. R.	
"	"	"	"	"	"	"	Tiffin, Ohio	"	
"	"	"	"	"	Cleveland, "	"	Akron, Ohio	"	
					"	"	New Castle, Pa.	"	
I. T.	P. R. R.	I. T.	Hillery, Ill.	NYC (C)	Cincinnati, Ohio	B&O	Akron, Ohio	P. R. R.	
"	"	"	"	"	"	"	Bellaire, Ohio	"	
"	"	"	"	"	"	"	Wheeling, W. Va.	"	
"	"	"	"	"	"	"	Columbus, Ohio	"	
					"	"	Mansfield, Ohio	"	
I. T.	P. R. R.	I. T.	Hillery, Ill.	NYC (C)	Cincinnati, Ohio	B&O	Newark, Ohio	P. R. R.	
"	"	"	"	"	"	"	Tiffin, Ohio	"	
"	"	"	"	"	Cleveland, "	"	Akron, Ohio	"	
"	"	"	Mackinaw, Ill.	"	Cincinnati, "	"	New Castle, Pa.	"	
							Akron, Ohio	"	
I. T.	P. R. R.	I. T.	Mackinaw, Ill.	NYC (C)	Cincinnati, Ohio	B&O	Bellaire, Ohio	P. R. R.	
"	"	"	"	"	"	"	Wheeling, W. Va.	"	
"	"	"	"	"	"	"	Columbus, Ohio	"	
"	"	"	"	"	"	"	Mansfield, Ohio	"	
					"	"	Newark, Ohio	"	
I. T.	P. R. R.	I. T.	Mackinaw, Ill.	NYC (C)	Cincinnati, Ohio	B&O	Tiffin, Ohio	P. R. R.	
"	"	"	"	"	Cleveland, Ohio	"	Akron, Ohio	"	
I. T.	"	"	Bloomington, Ill.	NYC&StL RR	Fostoria, Ohio	B&O	New Castle, Pa.	"	
"	"	"	"	"	"	"	Akron, Ohio	"	
							"	"	
I. T.	P. R. R.	I. T.	Bloomington, Ill.	NYC&StL RR	Fostoria, Ohio	B&O	Bellaire, Ohio	P. R. R.	
"	"	"	"	"	"	"	Wheeling, W. Va.	"	
"	"	"	"	"	"	"	Mansfield, Ohio	"	
"	"	"	"	"	"	"	Newark, Ohio	"	
					"	"	New Castle, Pa.	"	
NYC (C)	P. R. R.	NYC (C)	Cincinnati, Ohio	B&O	Akron, Ohio	P. R. R.			
"	"	"	"	"	Bellaire, Ohio	P. R. R.			
"	"	"	"	"	Wheeling, W. Va.	"			
"	"	"	"	"	Columbus, Ohio	"			
					Mansfield, Ohio	"			
NYC (C)	P. R. R.	NYC (C)	Cincinnati, Ohio	B&O	Newark, Ohio	P. R. R.			
"	"	"	"	"	Tiffin, Ohio	"			
"	"	"	Cleveland, "	"	Akron, Ohio	"			
"	"	"	Toledo, "	D&TSL	New Castle, Pa.	"			
					Detroit, Mich.	G. T.—C. N.—Buffalo, N. Y.	P. R. R.		
NYC&StL	P. R. R.	NYC&StL	Fostoria, Ohio	B&O	Akron, Ohio	P. R. R.			
"	"	"	"	"	Bellaire, Ohio	"			
"	"	"	"	"	Wheeling, W. Va.	"			
"	"	"	"	"	Mansfield, Ohio	"			
"	"	"	"	"	Newark, Ohio	"			
					New Castle, Pa.	"			
PRR TP&W	P. R. R.	P. R. R. Direct							
	"	TP&W Effner, Ind.	P. R. R.						

TARIFF AUTHORITY

Agent B. T. Jones Tariff 245-G I. C. C. 3356
 NYC R. R. I. C. C. 5

NYC RR I. C. C. 2 (West OC Series)
 NYC&StL — I. C. C. 4375

P. R. R. I. C. C. 390
 P. R. R. I. C. C. 13

Showing Typical "Sought" Routes on Grain, in Carloads, from Representative C. F. A. Origins to Eastern Destinations; also Presently Effective Routes Between the same Representative Origins and Destinations and Comparative Data as to Mileages and Line Haul Carriers Involved.

From	To	COLUMN A			COLUMN B			COLUMN C		
		Present Direct Routes			Present Routes via Which Hagerstown, Md. is Directly Intermediate (No Out-of Route or Back-haul Charge Involved)			"Sought" Routes via Which Hagerstown, Md. Would be Directly Intermediate (No Out-of Route or Back-haul Charge Involved)		
		Route	Miles	Number of Line Haul Carriers	Route	Miles	Number of Line Haul Carriers	Route	Miles	Number of Line Haul Carriers
Chicago, Ill.	Chester, Pa.	P. R. R. Chicago, Ill. To Chester, Pa.	821	1	B&O RR. To Cherry Run, W. Va. W. Md. Ry. To Shippensburg, Pa. Reading Co. To Chester, Pa.	687 54 165	3	C&O Ry. to Durbin, W. Va. W. Md. Ry. to Westport, Md. B&O RR. to Chester, Pa.	726 133 86	3
		B&O RR. Chicago, Ill. To Chester, Pa.	881	1	Total Miles	906		Total Miles	945	
								NYC RR. To Youngstown, Ohio P&LE RR. To Connellsville, Pa. W. Md. Ry. to York, Pa. P. R. R. To Chester, Pa.	415 123 246 95	
								Total Miles	879	
Indianapolis, Ind.	Freehold, N. J.	P. R. R. Indianapolis, Ind.	790	1	B&O RR. To Cherry Run, W. Va. W. Md. Ry. To Shippensburg, Pa. Reading Co. To Allentown, Pa. CRR of NJ To Freehold, N. J.	559 54 130 111	4	CI&L Ry. To Frankfort, Ind. NYC&StL RR. To Cleveland, Ohio W&LE Ry. To Pittsburgh Jet., Ohio P&WVa. Ry. To Conneilsville, Pa. W. Md. Ry. To York, Pa. P. R. R. To Freehold, N. J.	48 288 120 112 246 152	6
						854		Total Miles	966	

EXHIBIT No. 15

STATEMENT

Showing Typical "Sought" Routes on Grain, in Carloads, from Representative C. F. A. Origins to Eastern Destinations; also Presently Effective Routes Between the same Representative Origins and Destinations and Comparative Data as to Mileages and Line Haul Carriers Involved.

From	To	COLUMN A			COLUMN B			COLUMN C		
		Present Direct Routes			Present Routes via Which Hagerstown, Md. is Directly Intermediate (No Out-of Route or Back-haul Charge Involved)			"Sought" Routes via Which Hagerstown, Md. Would be Directly Intermediate (No Out-of Route or Back-haul Charge Involved)		
		Route	Miles	Number of Line Haul Carriers	Route	Miles	Number of Line Haul Carriers	Route	Miles	Number of Line Haul Carriers
Decatur, Ill.	New York, N. Y.	P. R. R. Decatur, Ill. To New York, N. Y.	987	1	Wabash Ry. To Toledo, Ohio	324	6	I. C. RR. To Louisville, Ky.	450	6
		B&O RR. To Park Jet. (Phila.), Pa.	920	3	W&LE Ry. To Pittsburgh Jet., Ohio	184		C&O Ry. To Durbin, W. Va.	503	
		Reading Co. To Allentown, Pa.	63		P&WVa. Ry. To Connellsville, Pa.	112		W. Md. Ry. To Westport, Md.	133	
		CRR of NJ to New York, N. Y.	89		W. Md. Ry. To Shippensburg, Pa.	204		B&O RR. To Park Jet. (Phila.), Pa.	100	
					Reading Co. To East Penn Jet., Pa.	129		Reading Co. To Allentown, Pa.	63	
					L. V. RR. To New York, N. Y.	100		CRR of NJ To New York, N. Y.	89	
		Total Miles	1072		Total Miles	1053		Total Miles	1338	
								Wabash Ry. To Chicago, Ill.	173	5
								NYC RR. To Youngstown, Ohio	415	
								P&LE RR. To Connellsville, Pa.	123	
								W. Md. Ry. To Fulton Jet., Md.	253	
								P. R. R. To New York City, N. Y.	198	
								Total Miles	1162	
								Wabash Ry. To Toledo, Ohio	324	4
								B&O RR. To Cherry Run, W. Va.	499	
								W. Md. Ry. to York, Pa.	96	
								P. R. R. To New York City, N. Y.	184	
								Total Miles	1103	
St. Louis, Mo.	Downingtown Pa.	P. R. R. St. Louis, Mo. To Downingtown, Pa.	945	1	B&O RR. To Cherry Run, W. Va.	784	3	CCC&StL RR. To Cleveland, Ohio	536	5
				1	W. Md. Ry. To Shippensburg, Pa.	54		NYC RR. To Youngstown, Ohio	92	
					Reading Co. To Downingtown, Pa.	157		P&LE RR. To Connellsville, Pa.	123	
					Total Miles	995		W. Md. Ry. To York, Pa.	246	
								P. R. R. To Downingtown, Pa.	68	
								Total Miles	1065	
								Southern Ry. To Louisville, Ky.	275	4
								C&O Ry. To Durbin, W. Va.	503	
								W. Md. Ry. To Fulton Jet., Md.	320	
								P. R. R. To Downingtown, Pa.	101	
								Total Miles	1199	
Toledo, Ohio	Wilmington, Del.	P. R. R. Toledo, Ohio To Wilmington, Del.	610	1	B&O RR. To Cherry Run, W. Va.	499	3	C&O Ry. To Durbin, W. Va.	548	3
				1	W. Md. To Shippensburg, Pa.	54		W. Md. Ry. To Westport, Md.	133	
		B&O RR. Toledo, Ohio To Wilmington, Del.	680		Reading Co. To Wilmington, Del.	167		B&O RR. To Wilmington, Del.	73	
					Total Miles	720		Total Miles	754	

Tariff Authority—Routes:

Agent B. T. Jones' F. T. No. 245-G, ICC No. 3356.
B&O RR. I. C. C. No. A-4.
Wabash Ry. I. C. C. No. 6170.

Alton RR. ICC No. 89
B&O RR. (ICC No. WL-10156
(ICC No. 22070)
CRR of NJ ICC No. G-3850
C&O Ry. ICC No. 11081
CB&Q RR. ICC No. 17392
CI&L Ry. ICC No. 4431
I. C. RR. ICC No. A-10441

L. V. RR. ICC No. C-8325
NYC RR. (C) ICC No. 8515
NYC RR. (M) ICC No. 5196
NYC RR. (W) ICC No. LS-1356
NYC&StL RR. ICC No. 5035
N&W Ry. ICC No. 8377
Penna. RR. ICC No. 398
P&LE RR. ICC No. 2942

P&WVa. RR. ICC No. 303
P. M. Ry. ICC No. 376
Reading Co. ICC No. 1110
Southern Ry. ICC No. A-10500
Wabash Ry. ICC No. A-15221
W. M. Ry. ICC No. 8392
W&LE RR. ICC No. 1854

EXHIBIT No. 16
STATEMENT

Showing Typical "Sought" Routes on Grain, in Carloads, From Representative C. F. A. Origins to Destinations on the Del-Mar-Va. Division of the Pennsylvania Railroad; also Presently Effective Routes Between the Same Representative Origins and Destinations and Comparative Data as to Mileage and Line Haul Carriers Involved.

From	To	COLUMN A			COLUMN B		
		Present Direct Routes			"Sought" Routes via Which Hagerstown, Md. Would Be Directly Intermediate (No Out of Route or Back Haul Charge Involved)		
		Route	Miles	Number of Line Haul Carriers	Route	Miles	Number of Line Haul Carriers
Chicago, Ill.	Dover, Del.	P. RR. Chicago, Ill. To Dover, Del.	847	1	NYC RR. To Youngstown, Ohio.	415	4
					P&LE RR. To Connellsville, Pa.	123	
					W. Md. Ry. To York, Pa.	246	
					P. R. R. To Dover, Del.	119	
					Total Miles	903	4
					NYC&StL Ry. To Fostoria, Ohio.	243	
					B&O RR. To Cherry Run, W. Va.	446	
					W. Md. Ry. To Hagerstown, Md.	19	
					P. R. R. To Dover, Del.	205	
					Total Miles	913	3
					C&O Ry. To Durbin, W. Va.	726	
					W. Md. Ry. To Fulton Jet., Md.	320	
					P. R. R. To Dover, Del.	100	
					Total Miles	1146	4
					Erie RR. To Youngstown, Ohio	427	
					P&LE RR. To Connellsville, Pa.	123	
					W. Md. Ry. To York, Pa.	246	
					P. R. R. To Dover, Del.	119	
					Total Miles	915	5
					Wab. Ry. To Toledo, Ohio.	234	
					W&LE Ry. To Pittsburgh Jet., Ohio.	184	
					P&WVa. Ry. To Connellsville, Pa.	112	
					W. Md. Ry. To Hagerstown, Md.	169	
					P. R. R. To Dover, Pa.	205	
					Total Miles	904	

Showing Typical "Sought" Routes on Grain, in Carloads, From Representative C. F. A. Origins to Destinations on the Del-Mar-Va. Division of the Pennsylvania Railroad; also Presently Effective Routes Between the Same Representative Origins and Destinations and Comparative Data as to Mileage and Line Haul Carriers Involved—Cont'd.

From	To	COLUMN A			COLUMN B				
		Present Direct Routes			"Sought" Routes via Which Hagerstown, Md. Would Be Directly Intermediate (No Out of Route or Back Haul Charge Involved)				
		Route	Miles	Number of Line Haul Carriers	Route	Miles	Number of Line Haul Carriers		
Peoria, Ill.	Georgetown, Del.	P. R. R. Peoria, Ill. to Georgetown, Del.	1045	1	CCC&StL Ry. To Cleveland, Ohio.	436	4		
					NYC RR. To Youngstown, Ohio.	92			
					P&LE RR. To Connellsville, Pa.	123			
					W. Md. Ry. To York, Pa.	246			
					P. R. R. To Georgetown, Del.	160			
					Total Miles			1117	
					NYC&StL Ry. To Fostoria, Ohio.	373		4	
					B&O RR. To Cherry Run, W. Va.	446			
					W. Md. Ry. To Fulton Jet., Md.	103			
					P. R. R. To Georgetown, Del.	141			
					Total Miles				1063
					CRI&P Ry. To Chicago, Ill.	161			6
					Wabash Ry. To Toledo, Ohio.	234			
					W&LE Ry. To Pittsburgh Jet., Ohio	184			
					P&WVa. Ry. To Connellsville, Pa.	112			
W. Md. Ry. To Hagerstown, Md.	169								
P. R. R. To Georgetown, Del.	246								
Total Miles		1106							
Indianapolis, Ind.	Cambridge, Md.	P. RR. Indianapolis, Ind. to Cambridge, Md.	827	1	NYC&StL Ry. To Fostoria, Ohio.	208	4		
					B&O RR. To Cherry Run, W. Va.	446			
					W. Md. Ry. To Fulton Jet., Md.	103			
					P. R. R. To Cambridge, Md.	172			
					Total Miles			927	
					CCC&StL Ry. To Cleveland, Ohio.	284		4	
					NYC RR. To Youngstown, Ohio.	92			
					P&LE Ry. To Connellsville, Pa.	123			
					W. Md. Ry. To York, Pa.	246			
					P. R. R. To Cambridge, Md.	188			
					Total Miles				933
					B&O RR. To Cincinnati, Ohio.	125			4
					C&O Ry. To Durbin, W. Va.	440			
					W. Md. Ry. To Fulton Jet., Md.	320			
					P. R. R. To Cambridge, Md.	172			
Total Miles		1057							

EXHIBIT No. 16
STATEMENT

Showing Typical "Sought" Routes on Grain, in Carloads, From Representative C. F. A. Origins to Destinations on the Del-Mar-Va. Division of the Pennsylvania Railroad; also Presently Effective Routes Between the Same Representative Origins and Destinations and Comparative Data as to Mileage and Line Haul Carriers Involved.

From	To	COLUMN A			COLUMN B		
		Present Direct Routes			"Sought" Route via Which Hagerstown, Md. Would Be Directly Intermediate (No Out of Route or Back Haul Charge Involved)		
		Route	Miles	Number of Line Haul Carriers	Route	Miles	Number of Line Haul Carriers
Decatur, Ill.	Salisbury, Md.	P. RR. Decatur, Ill. to Salisbury, Md.	979	1	B&O RR. To Cherry Run, W. Va.	712	3
					W. Md. Ry. To Fulton Jct., Md.	103	
					P. R. R. To Salisbury, Md.	155	
					Total Miles	970	5
					Wabash Ry. To Toledo, Ohio.	324	
					W&LE Ry. To Pittsburgh Jct., Ohio.	184	
					P&WVa. Ry. To Connellsville, Pa.	112	
					W. Md. Ry. To Hagerstown, Md.	169	
					P. R. R. To Salisbury, Md.	260	
					Total Miles	1049	
St. Louis, Mo.	Franklin City, Va.	P. RR. St. Louis, Mo. to Franklin City, Va.	1093	1	I. C. RR. To Mattoon, Ill.	92	5
					CCC&StL Ry. To Cleveland, Ohio.	412	
					NYC RR. To Youngstown, Ohio.	92	
					P&LE Ry. To Connellsville, Pa.	123	
					W. Md. Ry. To York, Pa.	246	
					P. R. R. To Salisbury, Md.	174	
					Total Miles	1139	
					B&O RR. To Cherry Run, W. Va.	784	3
					W. Md. Ry. To Fulton Jct., Md.	103	
					P. RR. To Franklin City, Va.	196	
					Total Miles	1083	4
					NYC&StL Ry. To Fostoria, Ohio.	439	
					B&O RR. To Cherry Run, W. Va.	446	
					W. Md. Ry. To Hagerstown, Md.	19	
					P. RR. To Franklin City, Va.	300	
					Total Miles	1204	4
					CCC&StL Ry. To Cleveland, Ohio.	536	
					NYC RR. To Youngstown, Ohio.	92	
					P&LE Ry. To Connellsville, Pa.	123	
					W. Md. Ry. To York, Pa.	246	
					P. RR. To Franklin City, Va.	214	
					Total Miles	1211	5
					Wabash Ry. To Toledo, Ohio.	442	
					W&LE Ry. To Pittsburgh Jct., Ohio.	184	
					P&WVa. Ry. To Connellsville, Pa.	112	
					W. Md. Ry. To Hagerstown, Md.	169	
					P. RR. To Franklin City, Va.	300	
					Total Miles	1207	

EXHIBIT No. 16

STATEMENT

Showing Typical "Sought" Routes on Grain, in Carloads, From Representative C. F. A. Origins to Destinations on the Del-Mar-Va. Division of the Pennsylvania Railroad; also Presently Effective Routes Between the Same Representative Origins and Destinations and Comparative Data as to Mileage and Line Haul Carriers Involved.

From	To	COLUMN A			COLUMN B		
		Present Direct Routes			"Sought" Route via Which Hagerstown, Md. Would Be Directly Intermediate (No Out of Route or Back Haul Charge Involved)		
		Route	Miles	Number of Line Haul Carriers	Route	Miles	Number of Line Haul Carriers
Toledo, Ohio.	Cape Charles, Va.	P. RR. Toledo, Ohio To Cape Charles, Va.	782	1	B&O RR. To Cherry Run, W. Va.	499	3
					W. Md. Ry. To Fulton Jet., Md.	103	
					P. R. R. To Cape Charles, Va.	244	
					Total Miles	846	4
					W&LE Ry. To Pittsburgh Jet., Ohio.	184	
					P&WVa. Ry. To Connellsville, Pa.	112	
					W. Md. Ry. To Hagerstown, Md.	169	
					P. R. R. To Cape Charles, Va.	349	
					Total Miles	814	
					NYC RR. To Youngstown, Ohio.	182	4
					P&LE Ry. To Connellsville, Pa.	123	
					W. Md. Ry. To York, Pa.	246	
					P. R. R. To Cape Charles, Pa.	263	
					Total Miles	814	
					C&O Ry. To Durbin, W. Va.	548	3
					W. Md. Ry. To Fulton Jet., Md.	320	
					P. RR. To Cape Charles, Va.	244	
					Total Miles	1112	
					NYC&StL Ry. To Cleveland, Ohio.	196	5
					NYC RR. To Youngstown, Ohio.	92	
					P&LE Ry. To Connellsville, Pa.	123	
					W. Md. Ry. To Hagerstown, Md.	169	
					P. RR. To Cape Charles, Va.	349	
					Total Miles	929	

TAIRFF AUTHORITIES ROUTES

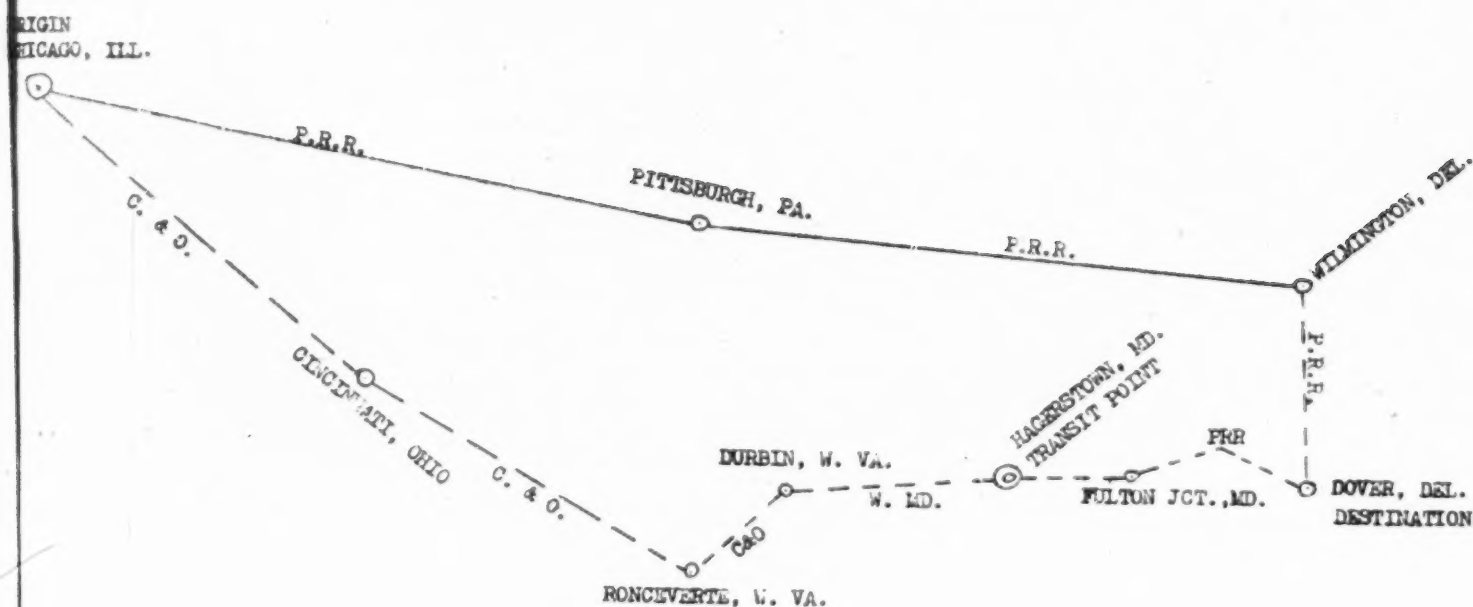
Agent B. T. Jones F. T. No. 245-G, I. C. C. No. 3356
Pa. R. R. I. C. C. No. 399.

TARIFF AUTHORITIES MILEAGES

B&O RR.	I. C. C. No. WL-10156
B&O RR.	" " 22070
C&O Ry.	" " 11081
CI&L Ry.	" " 4430
CRI&P Ry.	" " 8248
Erie RR.	" " A-5534
I. C. RR.	" " A-10441
NYC RR. (C)	" " 8515
NYC RR. (W)	" " LS-1356

NYC&StL RR.	I. C. C. No. 5035
N&W Ry.	" " 8377
Pa. RR.	" " 398
P&LE RR.	" " 2942
P&WVa. RR.	" " 303
Wab. Ry.	" " A-15221
W. Md. Ry.	" " 8392
W&LE Ry.	" " 7854

EXHIBIT No. 17



EXPLANATION:

Normal route.

Example of principle involved in complaint.

Under normal route FRR haul is 847 miles.

Under route sought by complainant (shown ---) FRR haul is 100 miles.

Reduction, 747 miles, is equal to 88%.

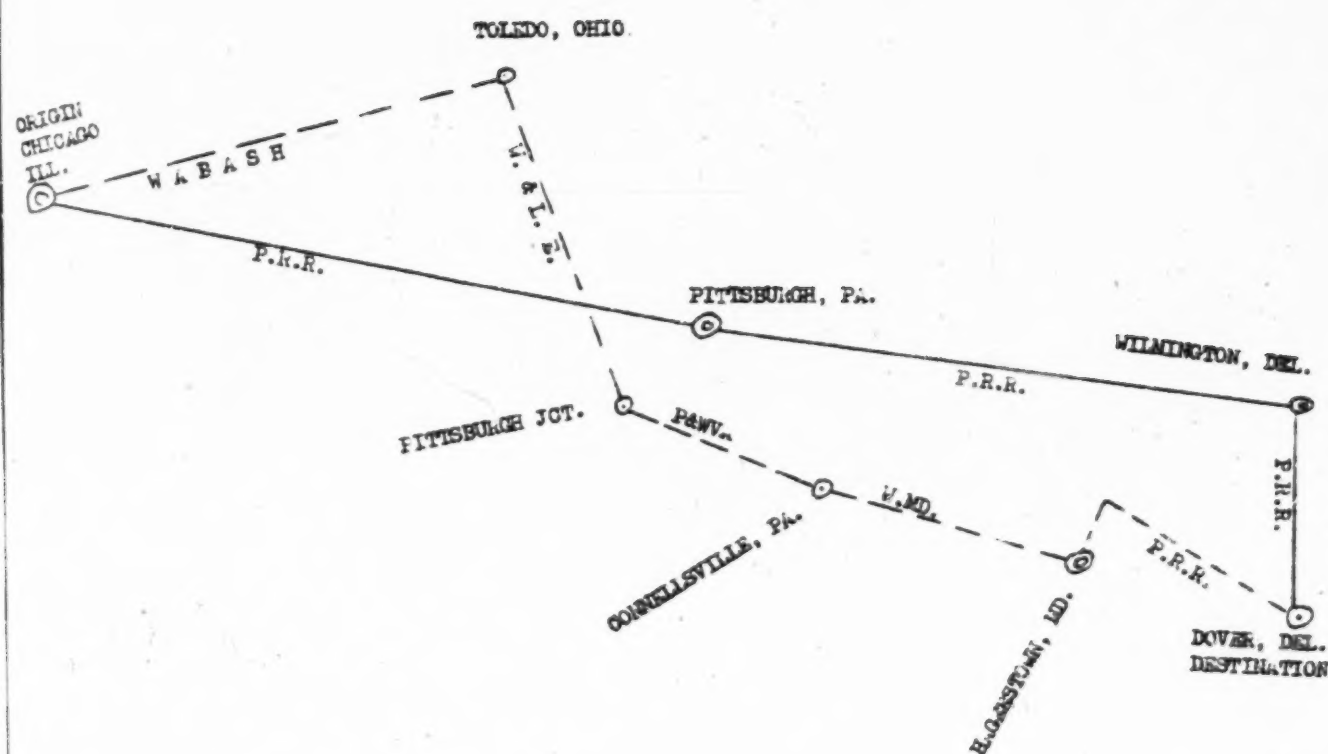
Under normal route no interchange is required with other railroads.

Under sought route there are two interchanges required.

The sought route interjects two additional intermediate lines.

Total mileage via sought route is 1146, or 299 miles greater than normal route.

EXHIBIT No. 18



EXPLANATION:

_____ Normal route
 - - - - - Example of principle involved
 in complaint

Under normal route P&M haul is 847 miles.

Under route sought by complainant
 (shown - - -) P&M haul is 205 miles.

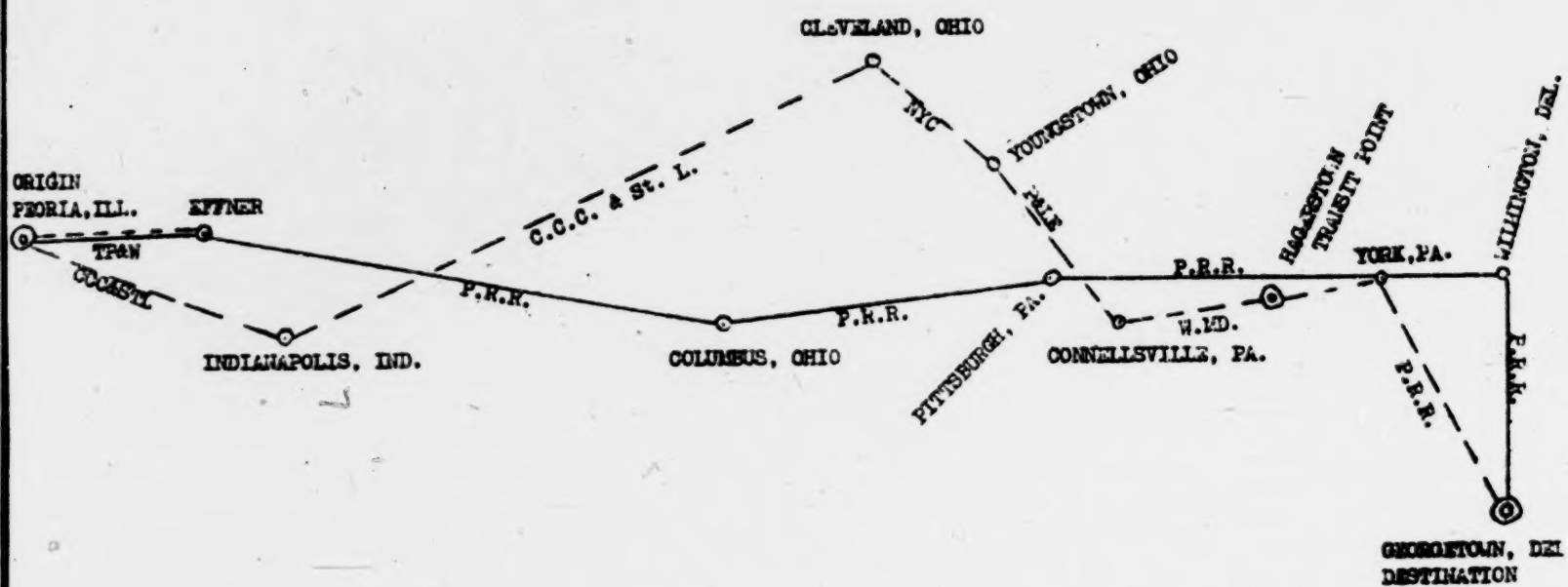
Reduction, 642 miles, is equal to 76%.

Under normal route no interchange is
 required with other railroads.

Under sought route there are four inter-
 changes required, viz;

Toledo, Ohio
 Pittsburgh Jct.
 Connellsville, Pa.
 Hagerstown, Md.

EXHIBIT No. 20



EXPLANATION:

Normal route
 Example of principle involved in complaint

Under normal route PRR haul is 870 miles.

Under route sought by complainant (shown ---) PRR haul is 100 miles

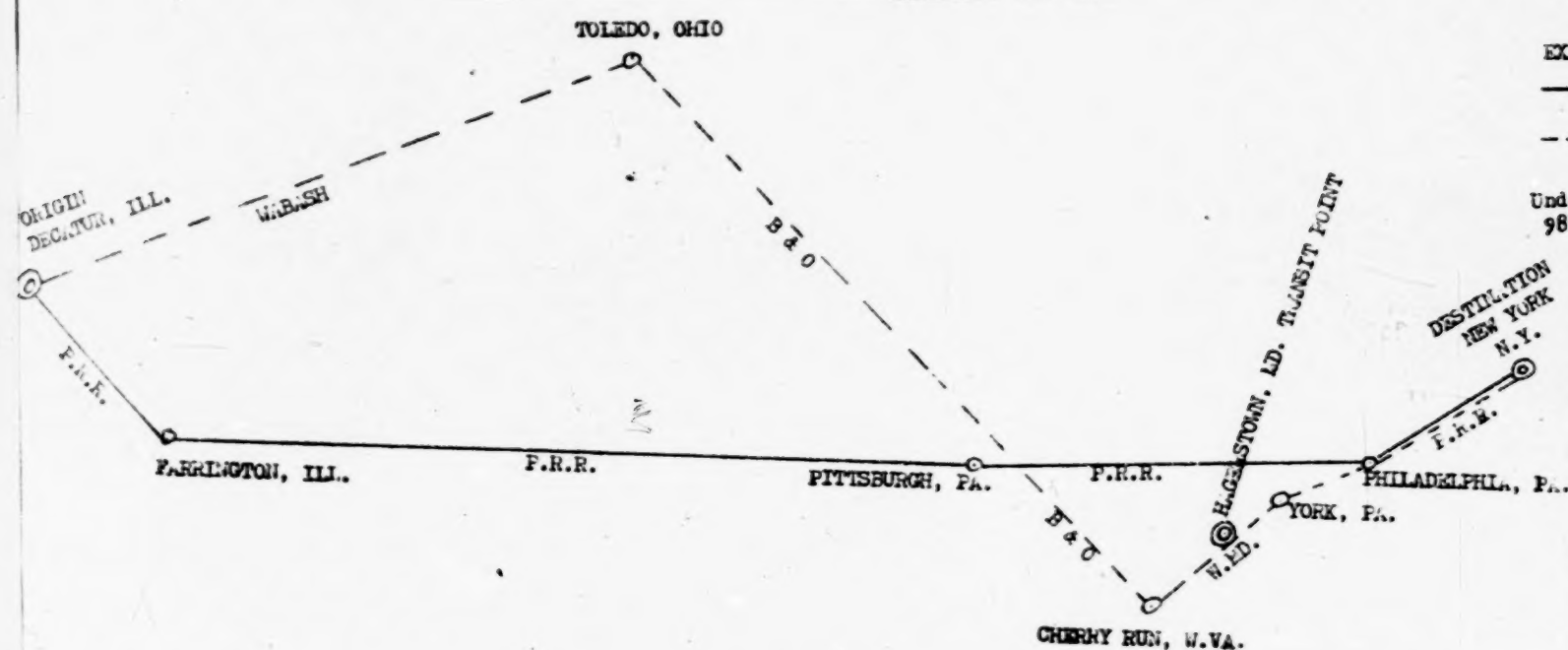
Reduction, 770 miles, is equal to 81.5%.

Under normal route one interchange is required between TP&W and PRR at Effner, Indiana.

Under sought route there are four interchanges required - Cleveland, Youngstown, Connellsville, & York.

The sought route interjects three additional intermediate lines between the originating and delivering line notwithstanding that those carriers have a direct interchange.

EXHIBIT No. 21

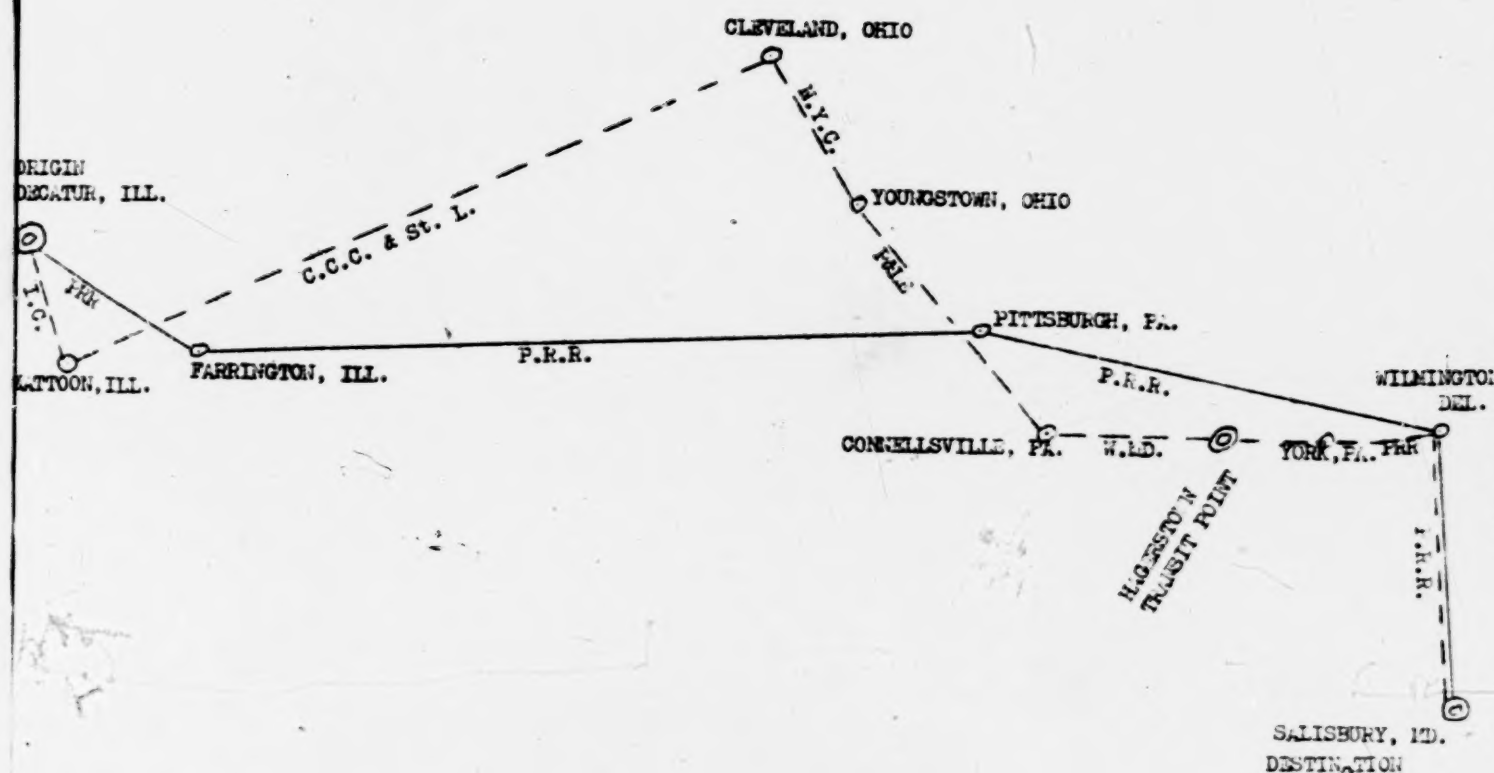


EXPLANATION:

Normal route

Example of principle
involved in complaintUnder normal route 15K haul is
987 miles.Under route sought by com-
plaint (shown) 15K haul
is 184 miles.Reduction, 803 miles, is
equal to 81.5%.Under normal route there is
no interchange with other
carriers.Under sought route there are
three interchanges required;
viz.,Toledo, Ohio
Cherry Run, W. Va.
York, Pa.

EXHIBIT No. 22



EXPLANATION:

———— Normal route

----- Example of principle
involved in complaint

Under normal route PRK haul is
979 miles.

Under route sought by complainant
(shown -----) PRK haul is 174 miles.

Reduction, 805 miles, is equal to
82%.

Under normal route there is no in-
terchange with other carriers.

Under sought route there are five
interchanges required; viz.,

Mattoon, Illinois
Cleveland, Ohio
Youngstown, Ohio
Connellsville, Pa.
York, Pa.

EXHIBIT No. 23

STATEMENT

Showing the Reshipping Rates on Grain, carloads, from Chicago, Ill. to New York, N. Y., Philadelphia, Pa. and Baltimore, Md., since the year 1910 and comparing such Rates with First and Sixth Class Rates and Percentage thereof.
(Rates shown in cents per 100 pounds)

Date	From Chicago to New York					From Chicago to Philadelphia					From Chicago to Baltimore					Explanation of change
	Grain Rate	1st Class	6th Class	Percentage of 1st	Percentage of 6th	Grain Rate	1st Class	6th Class	Percentage of 1st	Percentage of 6th	Grain Rate	1st Class	6th Class	Percentage of 1st	Percentage of 6th	
1910	16	75	25	21.3	64.0	14	73	23	19.2	60.9	13	72	22	18.1	59.1	Prior to 5% advance.
Jan. 20, 1915	16.8	78.8	26.3	21.3	63.9	14.8	76.8	24.3	19.3	60.9	13.8	75.8	23.3	18.2	59.2	5% increase—I&S 333.
Mar. 25, 1918	19.5	90	30.0	21.6	65.0	17.5	88	28.0	19.9	62.9	16.5	87	27.0	19.0	61.6	15% increase—Ex Parte 57
June 25, 1918	24.5	112.5	37.5	21.8	65.3	22.5	110	35	20.4	64.3	21.5	109	34	19.7	63.2	25% increase—General Order 28.
Aug. 26, 1920	34.5	157.5	52.5	21.9	65.7	32.5	155.5	50.5	20.9	64.4	31.5	154.5	49.5	20.4	63.6	40% increase—Ex Parte 74.
Sept. 28, 1921	30	157.5	52.5	19.0	57.1	28	155.5	50.5	18.0	55.4	27	154.5	49.5	17.5	54.5	Voluntary reductions made on grain.
July 1, 1934	24.5	152	42	16.1	58.3	22.5	145	40	15.5	56.3	21.5	140	39	15.4	55.1	Voluntary reductions made on grain.
Mar. 28, 1938 (Present)	26	167	46	15.6	56.7	24	160	44	15.0	54.5	23	154	42	14.9	54.8	5% increase—Ex Parte 115-123.
% of Increase in rate since year 1910	62.5	122.7	84.0	—	—	71.4	119.2	91.3	—	—	76.9	113.9	90.9	—	—	—

TARIFF AUTHORITIES:

Grain
P. R. R. ICC F-228.
P. R. R. ICC F-626.
P. R. R. ICC F-897.
P. R. R. ICC F-941.
W. J. Kelly's ICC 839.
W. J. Kelly's ICC 1126.
B. T. Jones' ICC 2515.
B. T. Jones' ICC 3055.
B. T. Jones' ICC 3100.
P. R. R. ICC 2869.
P. R. R. ICC 964.

Class Rates
PCC&StL ICC P-230—1910.
PCC&StL ICC 636—Jan. 28, 1915.
PCC&StL ICC P-772—Mar. 25, 1918.
PCC&StL ICC P-964—June 25, 1918.
CFA Tariff 217, ICC 743—Aug. 26, 1920.
CFA Tariff 217-A, ICC 1100—Sept. 28, 1921.
CFA Tariff 490, ICC 2455—July 1, 1934.
CFA Tariff 490-A, ICC 2767—Mar. 28, 1938 and Present.

[fol. 717]

EXHIBIT No. 24

Statement of the Class Rates Effective from Chicago to New York prior to the 5% advance in 1914 and the Class Rates Presently Effective Together with the Percentage of Increase Per Class.

	1	2	3	4	5	6
1914.....	.75	.65	.50	.35	.30	.25
Present.....	1.67	1.42	1.17	.84	.58	.46
Percentage of increase.....	122.6%	118.5%	134%	140%	93.3%	84%

Tariff Authority

Penna Company ICC F-419
Agent Jones ICC 2767

[fol. 718]

EXHIBIT No. 25

Statement of the Base Rates on Sundry Commodities from Chicago, Ill. to New York prior to the 5% advance, and the Presently Effective Base Rates, together with the Percentage of Increase in Such Rates, and Comparing Such Percentage Increase with the Increase on Grain, Carload.

Base rates from Chicago to New York

Commodity	Prior to 5% advance	Present rate	Percentage increase present rate over rate prior to 5% adv.
Grain.....	.16	.26	62.5
Ammonical liquors.....	.22	.38	72.7
Billets.....	5.00 GT	9.20 GT	84.0
Brick.....	.21	.363	72.9
Cattle.....	.30	.56	86.7
Chloride of lime.....	.22	.46	109.1
Iron & steel articles.....	.25	.52	108.0
Iron, pig.....	4.75 GT	9.20 GT	93.7
Lye, concentrated.....	.22	.50	127.3
Lead, pig.....	.175	.35	100.0
Lead, sublimed, dry.....	.20	.42	110.0
Meats, dressed.....	.45	.83	84.4
Meats, salted.....	.30	.63	110.0
Paper, building and roofing.....	.20	.42	110.0
Paper, newsprint.....	.20	.42	110.0
Nitre cake.....	.22	.38	72.7
Ore, zinc.....	.135	.35	159.3
Pitch and tar.....	.22	.38	72.7
Potash.....	.22	.38	72.7
Soda and soda ash.....	.22	.38	72.7
Salt cake.....	.22	.39	77.3
Salts, epsom, glauber.....	.22	.46	109.1
Wet wood pulp.....	.22	.46	109.1
Zinc anodes.....	.20	.35	75.0

Tariff Authority

Penna Company ICC F-419
Agent Jones ICC 3432
" ICC 3539
" ICC 2767

[fol. 719]

EXHIBIT No. 26

Excerpts from B&O RR. ICC 23273 showing extent transit on grain and grain products is available at Hagerstown, Md., on shipments destined east thereof.

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Application of Transit Privileges

Subject to rules and regulations herein, and to the Exception shown below, the commodities enumerated in Rule 1, Page 16, on traffic originating at or west of the western termini and when from connecting lines delivered to B. & O. R. R., at junctions western termini (See Note 3) and west thereof as defined in Agent B. T. Jones' Territorial Directory 3-G, I. C. C. 3319, will be entitled to the privilege of milling, mixing or malting in transit at any station on the B. & O. R. R. at or East of Pittsburgh, Pa., Wheeling, W. Va., Bellaire, Ohio, Parkersburg, Huntington or Kenova, W. Va., which is directly intermediate to the final destination of the milled, mixed or malted products, provided such final destination be New York, N. Y., Brooklyn, N. Y., B. & O. R. R. delivery, via Park Jct., Pa. or B. & O. R. R. station east of the transit point;

Page 3:

Rule 20 Milling, Mixing or Malting of Grain, Grain Products or By-Products

Wheat, Corn, Rye, Oats, Buckwheat and commodities covered by Rule 1, Page 1, originating at or West of the western termini and when from connecting lines delivered to the B. & O. R. R. at junctions western termini (See Note 3) and west thereof as described in agent B. T. Jones' Territorial Directory 3-G, I. C. C. 3319, may be milled, mixed or malted in transit at stations named below, subject to the milling, mixing or malting transit charges shown below:

Item	Transit Point	Transit Charge Cents per 100 lbs.	When final destination of milled, mixed or malted product is
185	Hagerstown, Md.	3¼	New York, N. Y., B. & O. R. R. delivery (via Park Jct. Pa.) S. I. R. T. Ry. (B. & O. System) (via Cranford Jct., N. J. and Park Jct., Pa.), Philadelphia, Pa., Baltimore, Md., Georgetown (Washington), Shepherd and Washington, D. C. and intermediate points on the Baltimore and Ohio R. R., including branch line stations east of the transit point.
430	Hagerstown, Md.	3¼	Points on R. F. & P. E. R. Points on the Sou. Ry. Alexandria to Lynchburg, Va., as indicated by index numbers 15 to 320), inclusive, as per A. Leland's I. C. C. No. A-19. Points on B. & O. R. R. and V. R. R. of Va.: Hagerstown, Md. to Lexington, Va., inclusive, and including Harrisonburg Extension of Sou. Ry. from Strasburg Jct. to Harrisonburg, Va. Points on the C. W. Ry. via C. W. Ry. Jct. (Harrisonburg), Va. Points described in Note 1, when reforwarded via Potomac Yard, Va., Sou. Ry. and Lynchburg, Va. on basis of rate to Lynchburg, Va., plus rate south of Lynchburg, Va., per Note 1, except where through rates are published.

[fol. 720]

Excerpts from B&O RR ICC 23273, showing extent transit on grain and grain products is available at Hagerstown, Md. on shipments destined east thereof.

Item	Transit Point	Transit Charge Cents per 100 lbs.	When final destination of milled, mixed or malted product is
435	Hagerstown, Md.	3¼	Points on the W. & O. D. Ry., Alexandria, Va. to Purcellville, Va., index Nos. 5 to 120, per A. P. Leland's I. C. C. No. A-19.
440	Hagerstown, Md.	3¼	Points on the Sou. Ry.: Wellington, Va. to Riverton, Va., inclusive (Index Nos. 455 to 530, inclusive) as per A. P. Leland's I. C. C. A-19.
445	Hagerstown, Md.	3¼	Points on the M. & P. R. R. Points on the B. & Ann. R. R., as per A. P. Leland's I. C. C. A-19.

Note—For explanation of notes (other than Note 3) and references, See Tariff B&O RR ICC 23273.

Note 3—Will not apply on shipments originating in Central Freight Association territory or from beyond such territory when received by the Baltimore and Ohio Railroad Company from the Pennsylvania Railroad at Buffalo, N. Y., Pittsburgh, Pa., Millvale, Willow Grove or Bessemer, Pa. For description of Central Freight Association territory, refer to Agent B. T. Jones' Territorial Directory No. 3-G, I. C. C. 3319, supplement thereto or successive issues thereof.

[fol. 721]

EXHIBIT No. 27

Excerpts from B&O R. R. ICC 23273 showing extent transit on grain and grain products is available at Winchester, Va. on shipments destined east thereof.

Page 32

Rule 20 Milling, Mixing or Malting of grain, Grain Products or By-Products.

Wheat, Corn, Rye, Oats, Buckwheat and commodities covered by Rule 1, page 16, originating at or west of the Western Termini and when from connecting lines delivered to the B&O R. R. at junctions Western Termini (see Note 3) and west thereof, as described in Agent B. T. Jones Territorial Directory 3-G, ICC 3319 may be milled mixed or malted in transit at stations named below, subject to the milling, mixing or malting in transit charges shown below.

Item	Transit Point	Transit Charge Cents Per 100 lbs.	When final destination of milled, mixed or malted products is:
195	Winchester, Va.	3¼¢(A)	Points on R. F. & P. R. R., south of Alexandria, Va. Via Potomac Yard, Va., to points on Sou. R'y, Lynchburg, Va., and north to Alexandria, Va., exclusive (as indicated by Index Nos. 20 to 320 and 450 to 465, inclusive, as per A. P. Leland's I. C. C. No. A-19. Points described in Note 1, when reforwarded via Potomac Yard, Va., R. F. & P. RR. and Richmond, Va., or via Potomac Yard, Va. Sou. Ry and Lynchburg, Va., on basis of rates to Richmond or Lynchburg, Va. plus rates south of Richmond or Lynchburg, Va. per Note 1, except where through rates are published.

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Item 510	Winchester, Va.	3¼¢(A)	Via Harpers Ferry, W. Va., to New York, N. Y. B&O R. R. delivery (Park Junction, Pa.) S. I. R. T. Ry. (B. & O. System) (via Cranford Jet., N. J., and Park Jet., Pa.), Philadelphia, Pa., Baltimore, Md., Washington, Shepherd and Georgetown (West Washington), D. C., or other B. & O. R. R. points intermediate thereto, including branch line stations east of transit point.
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For explanation of notes (other than Note 3) and references see Tariff (B&O R. R. I. C. C. 23273).

(A)—Includes charge for the excess haul between Winchester, Va. and Harper's Ferry, W. Va. of 63 miles.

Note 3—Will not apply on shipments originating in Central Freight Association territory or from beyond such territory when received by The Baltimore and Ohio Railroad Company from The Pennsylvania Railroad Company at Buffalo, N. Y., Pittsburgh, Pa., Millvale, Willow Grove, or Bessemer, Pa. For description of Central Freight Association Territory refer to Agent B. T. Jones' Territorial Directory No. 3-G, I. C. C. No. 3319 (B. & O. R. R., Agency Freight Tariff No. 4017, supplements thereto or successive issues thereof.

[fol. 722]

EXHIBIT No. 28

Statement showing typical examples of transit arrangements on lumber and forest products applicable at B. & O. R. R. points as shown in B. & O. R. R. ICC 23403.

Tariff Reference	Transit Point	Commodity	Territory	Out of Route or Back haul Charge (Per 100 lbs.)	Transit Charge
Item 60	Hagerstown, Md.	Lumber and Forest Products	All points between which there is excess or out of route service via transit point	4½¢(B)	\$6.93 per car
Item 90	Clarksburg, W. Va.	Logs	All points between which there is excess or out of route service via transit point	3-3/4¢(A)	2-3/4¢ per 100 lbs.
Item 110	Hyndman, Pa.	Lumber and Forest Products	All points between which there is excess or out of route service via transit point.	4½¢(C)	2-3/4¢ per 100 lbs.
Item 120	Moorefield, W. Va.	Lumber	All points between which there is excess or out of route service via transit point.	4½¢(C)	\$6.93 per Per car
Item 160	Weston, W. Va.	Lumber and Forest Products	All points between which there is excess or out of route service via transit point.	4½¢(C)	2-3/4¢ per 100 lbs.

- (A) Covers excess or out of route distances from 35 to and including 50 miles.
 (B) " " " " " " " " of 48 miles.
 (C) " " " " " " " " from 30 to and including 60 miles.

[fol. 723]

EXHIBIT No. 29

Statement showing charges applied on shipments moving via B&O R. R., stopped in transit for partially unloading or to complete loading at Hagerstown, Md., as provided for in B&O R. R., I. C. C. 23391.

Page 5

Rates

Rule 25—The rate to apply shall be the applicable carload rate (in effect at the time of shipment from point of origin) from point of origin to destination via stop-off point or points, except as provided in Note 1, plus stop-off charge provided in Rule 35, subject to certain modifications as set forth in paragraphs a, b, & c of Rule 25.

Page 5

Stop-Off Charge

Rule 35—The charge for stop will be made whether the car is set out of train or freight permitted to be taken from or put into the car while standing in train. The charge for each stop-off will be \$6.93 per car per stop.

Page 3

Note 1 Exceptions

(L) Hagerstown, Md. and Security, Md., and intermediate points will be considered directly intermediate to Brunswick, Md., on shipments originating at Cumberland, Md., or points west thereof, when destined to points beyond Brunswick, Md., subject to charge of eleven dollars (\$11.00) per car in addition to the published stop-off charge as provided in Rule 35, page 5.

Page 5

Stop-off Must Be Intermediate

Rule 5—The point at which car is stopped must be directly intermediate on the route from original point of shipment to final destination, except as provided in Note 1, and the rate with stop-off privileges, must be applicable via or through the point at which car is stopped.

[fol. 724]

EXHIBIT No. 30

Statement showing typical routes on Grain and Grain Products, carloads, from Chicago, Ill., to destinations on the Baltimore and Ohio R. R. of which University, D. C., Baltimore, Md., Aberdeen, Md., and Sykesville, Md. are representative.

Origin Road	Destination Road	Route
B. & O. R. R.	B. & O. R. R.	B. & O. R. R. direct.
CI&L Ry.	B. & O. R. R.	CI&L Ry., Mitchell, Ind., B&O RR.
"	"	" Indianapolis, Ind., B&O RR.
"	"	" Alida, Ind. "
Erie RR	B&O RR	Erie RR., Youngstown, O., B&O RR.
"	"	" Mansfield, O., B&O RR.
G. T. Ry.	B&O RR	G. T. Ry., Wellsboro, Ind., B&O RR.
Penna. RR	B&O RR	Penna. RR., Wheeling, W. Va., B&O RR.
"	"	" Bellaire, O. "
"	"	" Zanesville, O. "
"	"	" Akron, O. "
"	"	" Avilla, Ind. "
"	"	" Lima, O. "
"	"	" Mansfield, O. "
"	"	" Columbus, O. "
"	"	" Newark, O. "
"	"	" Indianapolis, Ind. "
"	"	" Cincinnati, O. "
"	"	" Seymour, Ind. "
"	"	" Hamilton, O. "
Wabash Ry.	B&O RR	Wabash Ry., Toledo, O., B&O RR.
"	"	" Willow Creek, Ind., B&O RR.
"	"	" Toledo, O., W&LE Ry, Monroeville, B&O
"	"	" " Zanesville, O., B&O
"	"	" " W&LE, Pittsburgh Jct., O., P&WVa.,
"	"	" " Bruceton, Pa., B&O RR.
"	"	" Toledo, O., W&LE., Terminal Jct., B&O.
CSS&SB RR.	B&O RR	CSS&SB RR., Miller, Ind., B&O RR.
"	"	" Michigan City, Ind., NYC&StL Ry.,
"	"	" Walkerton, Ind., B&O RR.
"	"	" Michigan City, Ind., NYC&St. L. Ry.,
"	"	" Postoria, O., B&O RR.
"	"	" Michigan City, Ind., NYC&StL., Painesville, O., B&O RR.

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Origin Road	Destination Road	Route
NYC R. R.	B. & O. R. R.	N.Y.C. R.R., Toledo, O., W. & L. E. Ry., Monroe- ville, O., B. & O. R. R.
"	"	" Toledo, O., B. & O. R. R.
"	"	" Willow Creek, Ind., B. & O. R. R.
"	"	" Fostoria, O., B. & O. R. R.
"	"	" Galatea, O., B. & O. R. R.
"	"	" Toledo, O., W. & L. E. Ry., Terminal Jct., O., B. & O. R. R.
"	"	" Toledo, O., W. & L. E. Ry., Pittsburgh Jct., O., P. & W. Va. Ry., Bruceton, Pa., B. & O. R. R.
"	"	" Ivorydale, O., B. & O. R. R.
NYC&StL Ry.	B. & O. R. R.	N.Y.C. & St.L.Ry., Painesville, O., B. & O. R. R.
"	"	" Cleveland, O., W. & L. E. Ry., Terminal Jct., O., B. & O. R. R.
"	"	" Cleveland, O., W. & L. E. Ry., Zanesville, O., B. & O. R. R.
"	"	" Fostoria, O., B. & O. R. R.
"	"	" Bellevue, O., W. & L. E. Ry., Terminal Jct., O., B. & O. R. R.
CMStP&P R. R.	B. & O. R. R.	C.M.St.P. & P.R.R. Seymour, Ind., B. & O. R. R.
"	"	" West Dana, Ind., B. & O. R. R.
C. & O. Ry.	B. & O. R. R.	C. & O. Ry. Cincinnati, O., B. & O. R. R.

Authority—Routing Provisions shown in B. T. Jones' ICC 3356—Section 3.

[fol. 726]

EXHIBIT No. 31

Statement showing typical routes on Grain and Grain Products, carloads, from Decatur, Ill., to destinations on the Baltimore and Ohio Railroad of which University, D. C., Baltimore, Md., Aberdeen, Md. and Sykesville, Md. are representative.

Origin Road	Destination Road	Route
B&O RR	B&O RR.	B&O RR direct.
Wabash Ry.	B&O RR	Wabash Ry., Defiance, O., B&O RR.
"	"	Toledo, O., W&LE Ry., Monroeville, O., B&O RR.
"	"	Toledo, O., W&LE Ry., Terminal Jct., O., B&O RR.
"	"	Toledo, O., W&LE Ry., Zanesville, O., B&O RR.
"	"	Toledo, O., W&LE Ry., Pittsburgh Jct., O., P&W Va. Ry., Bruceton, Pa., B&O RR.
Penna. R. R.	B&O RR	Penna. RR., Bellaire, O., B&O RR.
"	"	Zanesville, O., B&O RR.
"	"	Akron, O., B&O RR.
"	"	Mansfield, O., B&O RR.
"	"	Newark, O., B&O RR.
"	"	Indianapolis, Ind., B&O RR.
"	"	Cincinnati, O., B&O RR.
"	"	Seymour, Ind., B&O RR.
"	"	Hamilton, O., B&O RR.
"	"	Indianapolis, Ind., NYC., Columbus, O., B& Cincinnati, O., B&
"	"	Auburn Jct., Ind., B&O RR.
"	"	La Paz Jct., Ind., B&O RR.
"	"	Terre Haute, Ind., CMStP&P RR., Seymour, Ind., B&O RR.
"	"	Crawfordsville, Ind., NYC RR., Columbus, O.
"	"	Colfax, Ind., NYC., Columbus, O., B&O RR.
"	"	Wheeling, W. Va., B&O RR.
Ill. Cent.	B&O RR.	Ill. Cent. RR., Edgewood, Ill., B&O RR.
"	"	Mattoon, Ill., B&O RR.
"	"	Odin, Ill., B&O RR.
"	"	Pana, Ill., B&O RR.
"	"	Sandoval, Ill., B&O RR.
"	"	Springfield, Ill., B&O RR.
"	"	Chicago, Ill., B&O RR.
"	"	Indianapolis, Ind., B&O RR.
"	"	Olney, Ill., B&O RR.
"	"	Lerna, Ill., NYC&StL., Holgate, O., B&O
Ill. Term.	B&O RR.	Ill. Term., Springfield, Ill., B&O RR.

Authority—Routing Provisions shown in B. T. Jones' ICC 3356—Section 3.

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EXHIBIT No. 32

Statement showing typical routes on Grain and Grain Products, carloads, from Peoria, Ill. to destinations on the Baltimore and Ohio Railroad of which University, D. C., Baltimore, Md., Aberdeen, Md. and Sykesville, Md. are representative.

Origin Road	Destination Road	Route
Penna. R. R.	B&O RR.	Penna. R.R., Bellaire, O., B&O RR.
"	"	Wheeling, W. Va., B&O RR.
"	"	Zanesville, O., B&O RR.
"	"	Decatur, Ill., B&O RR.
"	"	Akron, O., B&O RR.
"	"	Mansfield, O., B&O RR.
"	"	Columbus, O., B&O RR.
"	"	Newark, O., B&O RR.
"	"	Indianapolis, Ind., B&O RR.
"	"	Cincinnati, O., B&O RR.
"	"	Seymour, Ind., B&O RR.
"	"	Hamilton, O., B&O RR.
"	"	Auburn Jet., Ind., B&O RR.
"	"	La Paz Jet., Ind., B&O RR.
"	"	Indianapolis, Ind., NYC, Columbus, B&O.
"	"	Indianapolis, Ind., NYC, Cincinnati, B&O.
"	"	Terre Haute, Ind., CMStP&P, Seymour, Ind. B&O RR.
NYC RR	B&O RR	NYC RR., Columbus, O., B&O RR.
"	"	Ivorydale, O., B&O RR.
NYC&StL	B&O RR	NYC&StL RR., Cleveland, O., W&LE., Terminal Jet., O., B&O RR.
"	"	Bellevue, O., W&LE., Pittsburgh Jet., O., P&WVa Ry., Bruceton, Pa., B&O RR.
"	"	Bellevue, O., W&LE., Terminal Jet., O., B&O
"	"	Cleveland, O., W&LE., Pittsburgh Jet., O., P&WVa Ry., Bruceton, Pa., B&O RR.
"	"	Fostoria, O., B&O RR.
"	"	Bluffton, O., NO Ry., Spencer, O., W&LE Ry. Terminal Jet., O., B&O RR.
"	"	Bluffton, O., NO Ry., Copley, O., AC&Y Ry., Mogodore, O., W&LE., Terminal Jet., O., B&O
"	"	Fremont, O., W&LE Ry., Pittsburgh Jet., O., P&WVa., Bruceton, Pa., B&O RR.
"	"	Fremont, O., W&LE Ry., Terminal Jet., O., B&O

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Origin Road	Destination Road	Route
NYC&StL	B. & O. R. R.	N.Y.C. & St.L.R.R., Delphos, O., N. O. Ry., Copley Jet., O., A. C. & Y. Ry., Mogadore, O., W. & L. E. Ry., Terminal Jet., O., B. & O. R. R.
"	"	" Delphos, O., N. O. Ry., Spencer, O., W. & L. E. Ry., Terminal Jet., O., B. & O. R. R.
"	"	" Bluffton, O., N. O. Ry., Copley Jet., O., A. C. & Y. Ry., Akron, O., B. & O. R. R.
"	"	" Delphos, O., N. O. Ry., Copley Jet., O., A. C. & Y. Ry., Akron, O., B. & O. R. R.
Alton R. R.	B. & O. R. R.	Alton R. R., Chicago, Ill., B. & O. R. R.
"	"	" Springfield, Ill., B. & O. R. R.
"	"	" Bloomington, Ill., B. & O. R. R.
"	"	" Ashland, Ill., B. & O. R. R.
"	"	" E. St. Louis, Ill., B. & O. R. R.
Ill. Cent. R.R.	B. & O. R. R.	Ill. Cent. R. R., Chicago, Ill., B. & O. R. R.
"	"	" Springfield, Ill., B. & O. R. R.
"	"	" Virginia City, Ill., B. & O. R. R.
"	"	" Decatur, Ill., B. & O. R. R.
Ill. Term'l R. R.	B. & O. R. R.	Ill. Term'l R. R., Springfield, Ill., B. & O. R. R.
"	"	" Decatur, Ill., B. & O. R. R.
CB&Q R. R.	B. & O. R. R.	C. B. & Q. R. R. Chicago, Ill., B. & O. R. R.
C. & I. M. Ry.	B. & O. R. R.	C. & I. M. Ry. Springfield, Ill., B. & O. R. R.
C. R. I. & P. Ry.	B. & O. R. R.	C. R. I. & P. Ry. Chicago, Ill., B. & O. R. R.
"	"	" Chicago, Ill., C. & E. I. R. R., Hills- dale, Ind., B. & O. R. R.
TP&W R. R.	B. & O. R. R.	T. P. & W. R. R. Forest, Ill., Wabash Ry., Defiance, O., B. & O. R. R.
C&NW Ry	B. & O. R. R.	C. & N. W. Ry. Chicago, Ill., B. & O. R. R.

Authority—Routing Provisions shown in B. T. Jones' ICC 3356—Section 3.

Statement showing mileages via typical working routes on Grain and Grain Products from Chicago, Peoria and Decatur, Ill. to University, D. C., Baltimore, Sykesville, and Aberdeen, Md., together with number of interchanges required via each route.

To	From	Miles via Shortest Working Route	Origin Road	Destin- ation Road	Miles via Working Route	Number of Interchanges via Working Route	Working Route
University, D. C.	Chicago, Ill.	772	B&O RR	B&O RR	772	None	B&O direct.
"	"	"	Erie	"	793	1	Erie R. R., Youngstown, O., B. & O.
"	"	"	P. R. R.	"	788	1	PRR., Wheeling, W. Va., B. & O.
"	"	"	Wab. R. R.	"	817	1	Wabash Ry., Toledo, B. & O.
"	"	"	NYC	"	817	1	NYC RR, Toledo, O., B. & O.
"	"	"	NYC&StL	"	773	1	NYC&StL R R, Fostoria, O., B&O.
University, D. C.	Decatur, Ill.	797	C&O Ry.	"	818	1	C&O Ry., Cincinnati, O., B&O.
"	"	"	B&O R R	B&O RR	797	None	B&O direct.
"	"	"	Wab. Ry.	"	854	1	Wabash Ry., Defiance, O. B&O
"	"	"	PRR	"	854	1	Pennsylvania R R., Wheeling, W. Va., B & O
University, D. C.	Peoria, Ill.	857	PRR	B&O RR	933	1	Pennsylvania R R, Wheeling, W. Va., B&O
"	"	"	NYC	"	857	1	NYC RR, Ivorydale, O., B & O
"	"	"	NYC&StL	"	903	1	NYC&StL R R, Fostoria, O. B. & O.
"	"	"	Alton	"	903	1	Alton R R, Springfield, Ill., B & O
"	"	"	Ill. Cent.	"	874	1	Ill. Cent. R. R., Decatur, Ill., B. & O.
Baltimore, Md.	Chicago, Ill.	797	B&O RR	B&O RR	797	None	B&O direct.
"	"	"	Erie	"	818	1	Erie R. R., Youngstown, O. B&O.
"	"	"	PRR	"	814	1	Penn. R. R., Wheeling, W. Va., B & O.
"	"	"	Wabash	"	843	1	Wabash Ry., Toledo, O., B & O.
"	"	"	NYC	"	843	1	NYC RR, Toledo, O., B & O.
"	"	"	NYC&StL	"	799	1	NYC&StL R R, Fostoria, O. B. & O.
"	"	"	C&O	"	844	1	C&O R. R., Cincinnati, B. & O.
Baltimore, Md.	Decatur, Ill.	823	B&O R R	B&O R R	823	None	B&O R R direct.
"	"	"	Wab.	"	880	1	Wab. Ry., Defiance, O., B & O.
"	"	"	PRR	"	880	1	Penn. R R., Wheeling, W. Va., B & O.
Baltimore, Md.	Peoria, Ill.	882	PRR	B&O R R	959	1	Penn. R. R., Wheeling, W. Va., B & O.
"	"	"	NYC	"	882	1	NYC R R., Ivorydale, O., B & O.
"	"	"	NYC&StL	"	929	1	NYC&StL R R., Fostoria, O., B & O.
"	"	"	Alton	"	929	1	Alton R. R., Springfield, Ill., B & O.
"	"	"	Ill. Cent.	"	900	1	Ill. Cent., Decatur, Ill., B & O.
Sykesville, Md.	Chicago, Ill.	769	B&O R R	B&O R R	769	None	B&O direct.
"	"	"	Erie	"	790	1	Erie R R., Youngstown, O., B & O.
"	"	"	PRR	"	785	1	P. R. R., Wheeling, W. Va., B & O.
"	"	"	Wab. Ry.	"	814	1	Wab. Ry., Toledo, O., B & O.
"	"	"	NYC	"	814	1	NYC R R., Toledo, O., B & O.
"	"	"	NYC&StL	"	770	1	NYC&StLRy., Fostoria, O., B & O
"	"	"	C&O	"	815	1	C&O Ry., Cincinnati, O. B & O
Sykesville, Md.	Decatur, Ill.	794	B&O R R	B&O R R	794	None	B&O R R direct.
"	"	"	Wab.	"	851	1	Wab. Ry., Defiance, O., B & O
"	"	"	PRR	"	851	1	P. R. R., Wheeling, W. Va., B & O
Sykesville, Md.,	Peoria, Ill.	854	PRR	B&O R R	930	1	P. R. R., Wheeling, W. Va., B & O.
"	"	"	NYC	"	854	1	NYC R R, Ivorydale, O., B & O.
"	"	"	NYC&StL	"	900	1	NYC &StL, RR, Fostoria, O., B & O.
"	"	"	Alton	"	900	1	Alton R R, Springfield, Ill., B & O.
"	"	"	Ill. Cent.	"	871	1	Ill. Cent. R. R., Decatur, Ill., B & O.
Aberdeen, Md.,	Chicago, Ill.	830	B&O R R	B&O R R	830	None	B&O R R direct.
"	"	"	Erie	"	851	1	Erie R R, Youngstown, O. B & O.
"	"	"	P R R	"	847	1	P. R. R., Wheeling, W. Va. B & O.
"	"	"	Wab.	"	875	1	Wab. Ry., Toledo, O., B & O.
"	"	"	NYC	"	876	1	NYC R R, Toledo, O., B & O.
"	"	"	NYC&StL	"	832	1	NYC&StL RR, Fostoria, O., B & O.
"	"	"	C&O	"	877	1	C&O, Cincinnati, O., B & O.
Aberdeen, Md.,	Decatur, Ill.	855	B&O R R	B&O R R	855	None	B&O R R direct.
"	"	"	Wab. Ry.,	"	912	1	Wabash Ry., Defiance, O., B & O.
"	"	"	PRR	"	913	1	P R R., Wheeling, W. Va., B & O.
Aberdeen, Md.,	Peoria, Ill.	915	PRR	B&O R R	992	1	P R R., Wheeling, W. Va., B & O.
"	"	"	NYC	"	915	1	NYC RR., Ivorydale, O., B & O.
"	"	"	NYC&StL	"	961	1	NYC&StL RR, Fostoria, O., B & O.
"	"	"	Alton	"	961	1	Alton R R., Springfield, Ill., B & O.

EXHIBIT No. 34

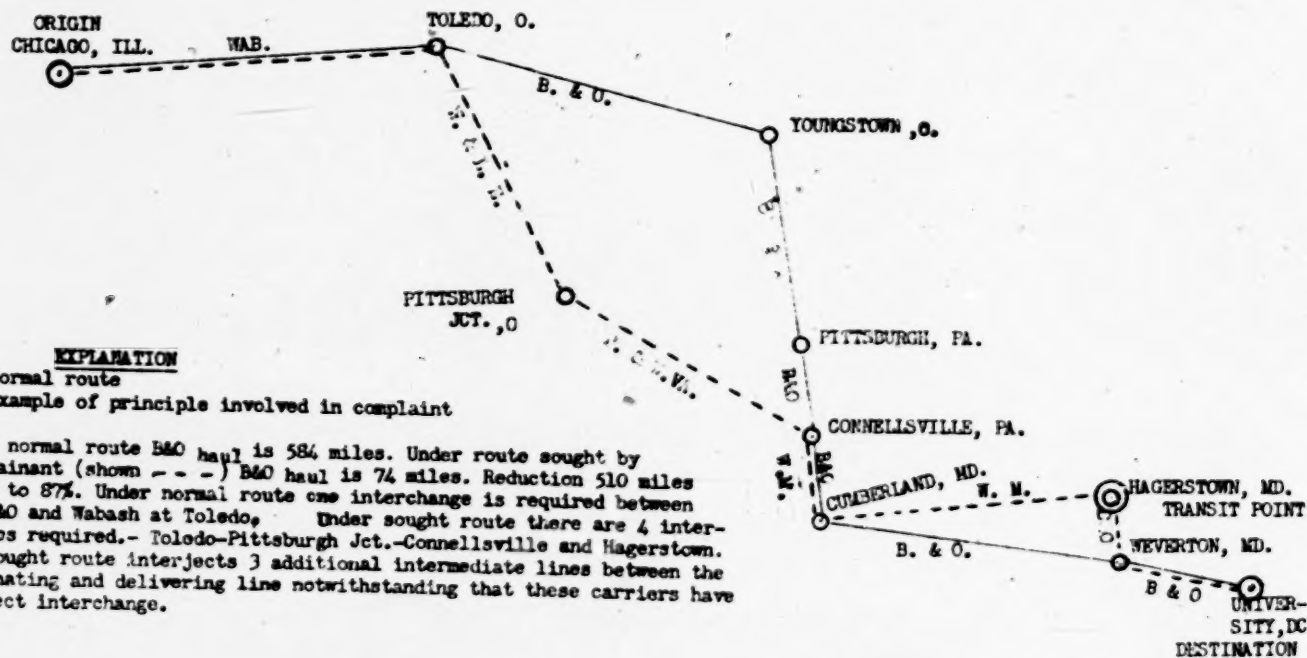


EXHIBIT No. 35

CHICAGO, ILL
ORIGIN

N.Y.C.

TOLEDO, O.

N.Y.C.

YOUNGSTOWN, O.

EXPLANATION

----- Normal route
 - - - - Example of principle involved in complaint.

NOTE

Under normal route D&O haul is 584 miles. Under routing sought by complaint (shown - - -) D&O haul is 74 miles. Reduction 510 miles equal to 87%. Under normal route there is one interchange between the N.Y.C. and B. & O. at Toledo. Under sought route there are three interchanges required, viz. - Youngstown, Connellsville and Hagerstown. The sought route injects two additional intermediate lines between the origin and delivering carriers, notwithstanding that these carriers have a direct interchange.

B. & O.

P. & L. E.

CONNELLSVILLE, PA.

B. & O.

A. & N.

CUMBERLAND, MD. B. & O.

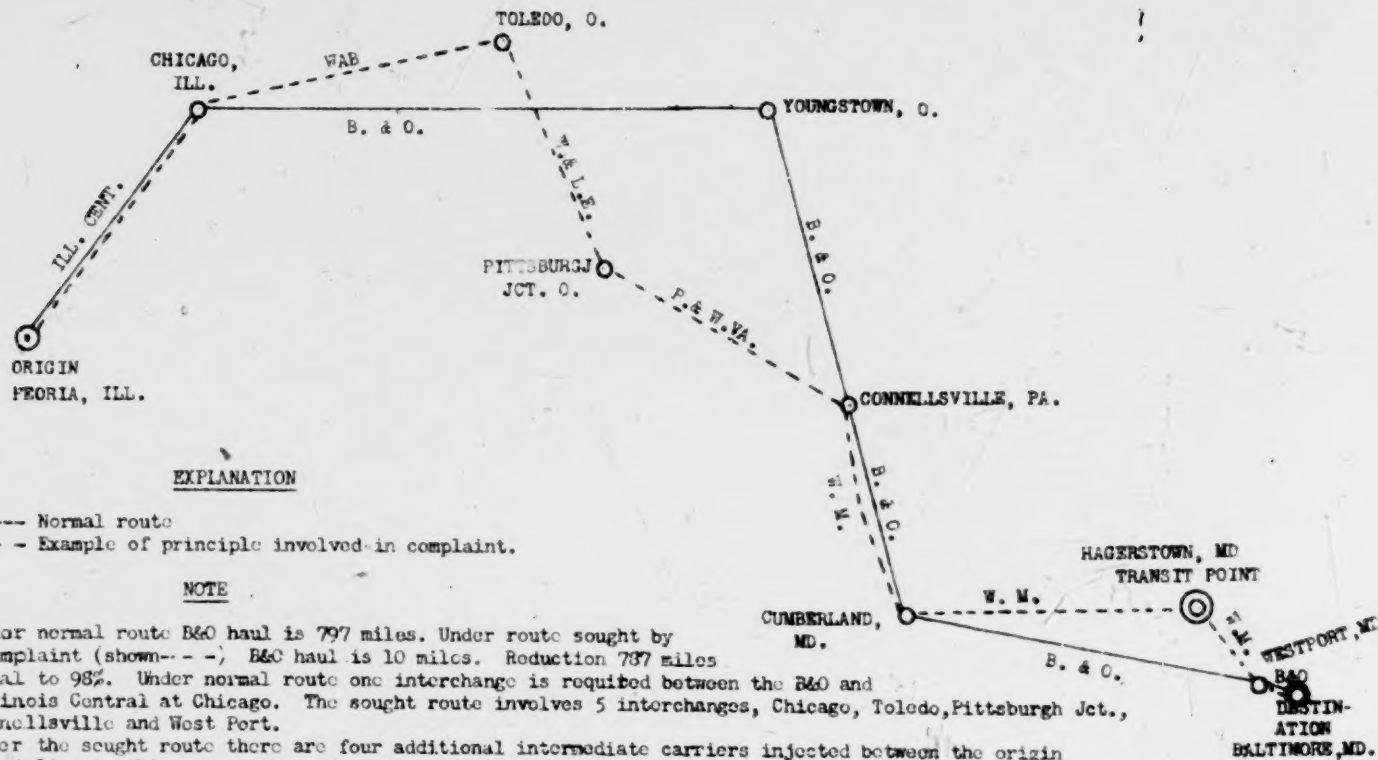
HAGERSTOWN, MD.
TRANSIT POINT

WEVERTON, MD.

B. & O.

UNIVERSITY, D.C.
DESTINATION

EXHIBIT No. 36



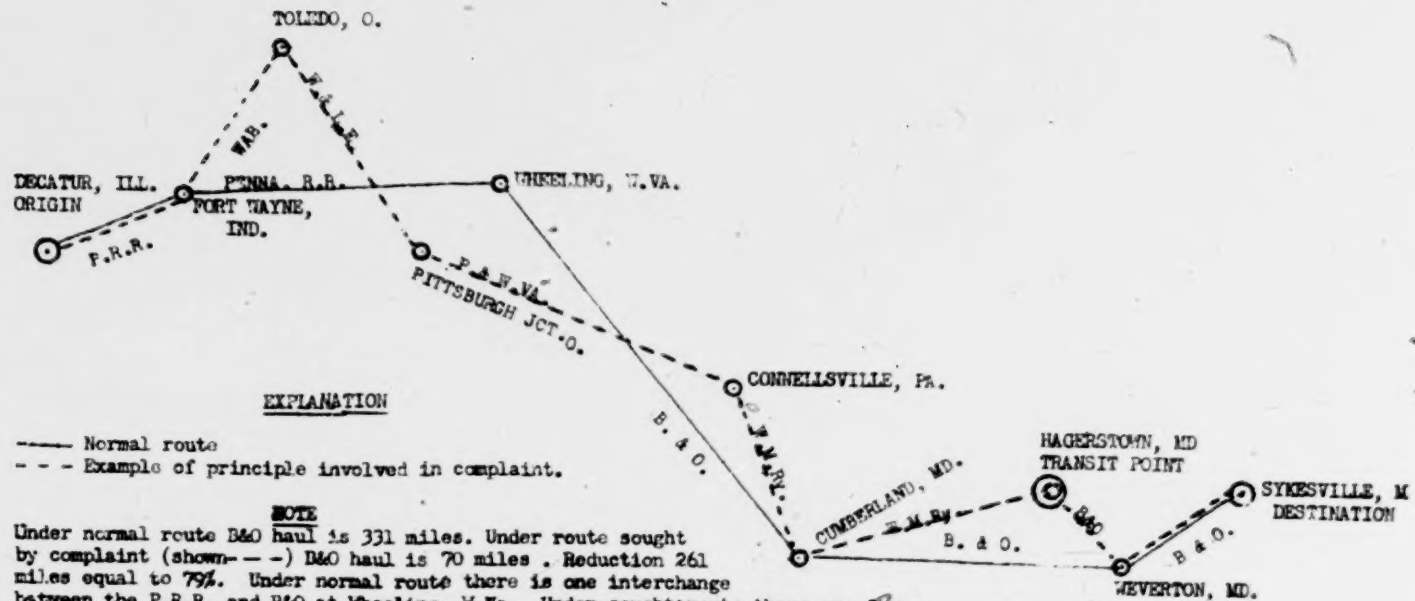
EXPLANATION

- Normal route
- Example of principle involved in complaint.

NOTE

Under normal route B&O haul is 797 miles. Under route sought by complaint (shown---), B&O haul is 10 miles. Reduction 787 miles equal to 98%. Under normal route one interchange is required between the B&O and Illinois Central at Chicago. The sought route involves 5 interchanges, Chicago, Toledo, Pittsburgh Jct., Connellsville and West Port. Under the sought route there are four additional intermediate carriers injected between the origin and delivering line, notwithstanding that these carriers have a direct connection.

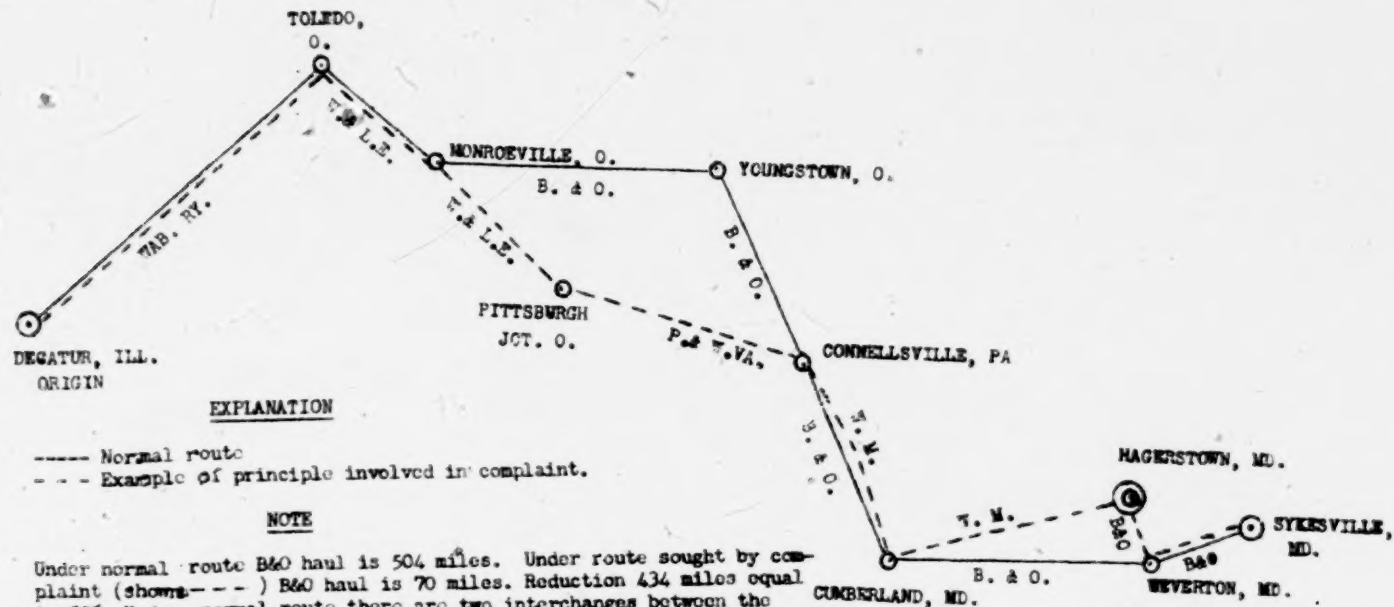
EXHIBIT No. 37



NOTE

Under normal route B&O haul is 331 miles. Under route sought by complaint (shown - -) B&O haul is 70 miles. Reduction 261 miles equal to 79%. Under normal route there is one interchange between the P.R.R. and B&O at Wheeling, W. Va. Under sought route there are five interchanges required - Port Wayne, Toledo, Pittsburgh Jct., Connellsville and Hagerstown. The sought route injects four additional lines between origin and destination roads notwithstanding that these carriers have a direct interchange.

EXHIBIT No. 38



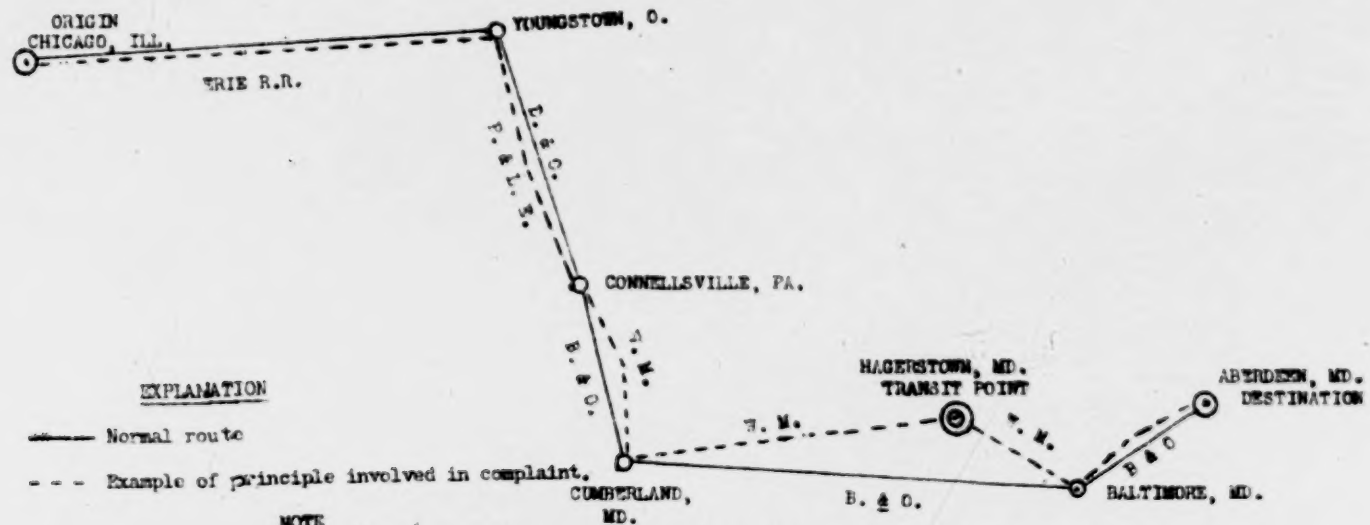
EXPLANATION

- Normal route
- Example of principle involved in complaint.

NOTE

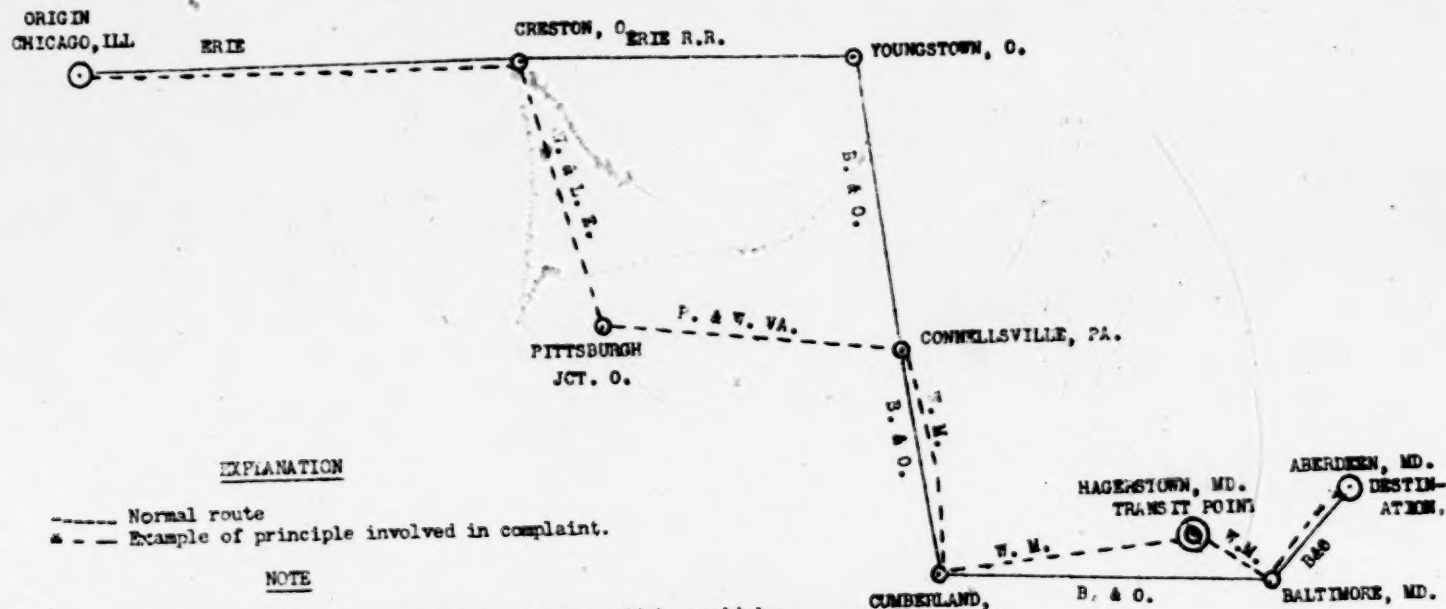
Under normal route B&O haul is 504 miles. Under route sought by complaint (shown.....) B&O haul is 70 miles. Reduction 434 miles equal to 85%. Under normal route there are two interchanges between the Wabash and B&O - Toledo and Monroeville. Under sought route there are four interchanges required, Toledo, Pittsburgh Jct., Connellsville and Hagerstown. The sought route injects two additional intermediate lines.

EXHIBIT No. 39



Under normal route B&O haul is 423 miles. Under routing sought by complaint (shown - - -) B&O haul is 35 miles.
Reduction 388 miles equal to 92%.
Under normal route there is one interchange between the Erie and B&O at Youngstown.
Under sought route there are three interchanges required, viz.- Youngstown, Connellsville, Baltimore.
The sought route injects two additional intermediate lines between the origin and delivering carriers, notwithstanding that these carriers have a direct interchange.

EXHIBIT No. 40



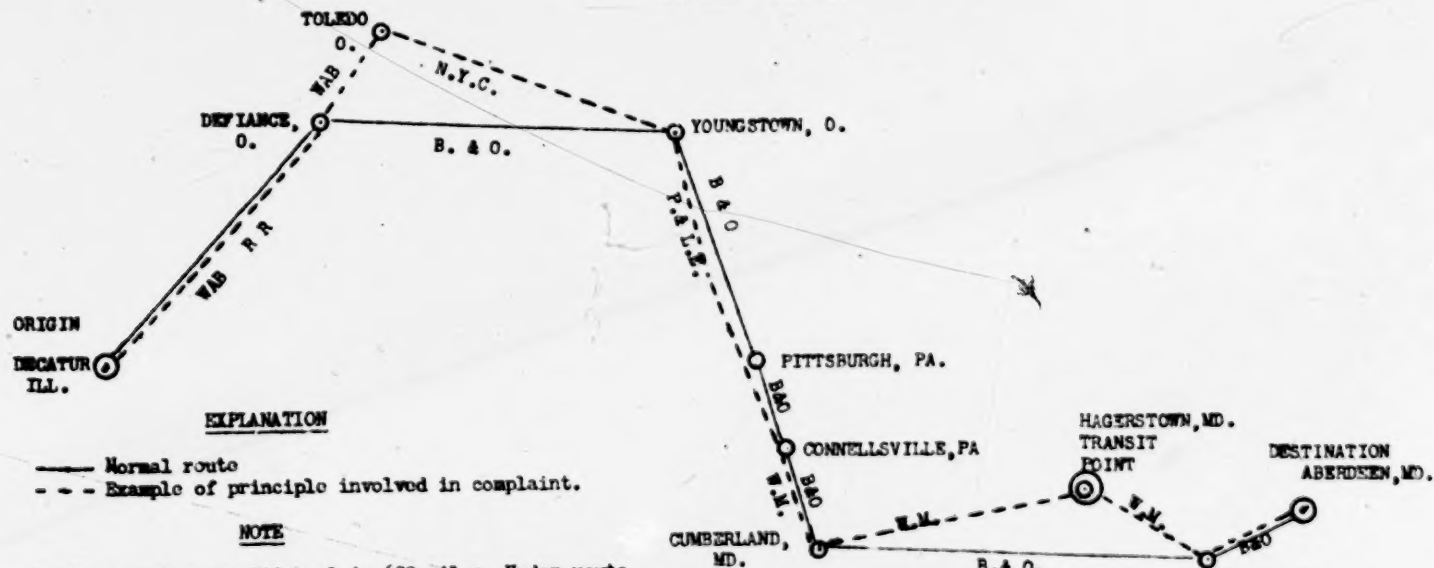
EXPLANATION

- Normal route
- Example of principle involved in complaint.

NOTE

Under normal route B&O haul is 423 miles. Under routing sought by complaint (shown - - -) B&O haul is 35 miles. Reduction 388 miles equal to 92%. Under normal route there is one interchange between the Erie and B&O at Youngstown. Under sought route there are four interchanges required, viz., Creston, Pittsburgh Jct., Connellsville & Baltimore. The sought route injects three additional intermediate lines between the origin and delivering carriers, notwithstanding that these carriers have a direct interchange.

EXHIBIT No. 41



Under normal route B&O haul is 639 miles. Under route sought by complaint (shown - - -) B&O haul is 35 miles. Reduction 604 miles, equal to 95%. Under normal route there is one interchange between the Wabash and B&O at Defiance, O. Under sought route there are four interchanges required, Toledo, Youngstown, Connellsville and Baltimore. The sought route injects 3 additional intermediate lines between the originating and delivering lines, notwithstanding that these carriers have a direct interchange.

EXHIBIT No. 42

Explanation.

- Normal route.
- - - Example of principle involved in complaint.

Via normal route an out of route (Harpers Ferry, W. Va. to Frederick, Md.) charge of $3\frac{1}{2}$ ¢ per 100 lbs. (includes the transit charge of $\frac{1}{2}$ ¢ per 100 lbs.) is assessed.
(Item 380 B&O ICC 23273).

ORIGIN
CHICAGO, ILL.

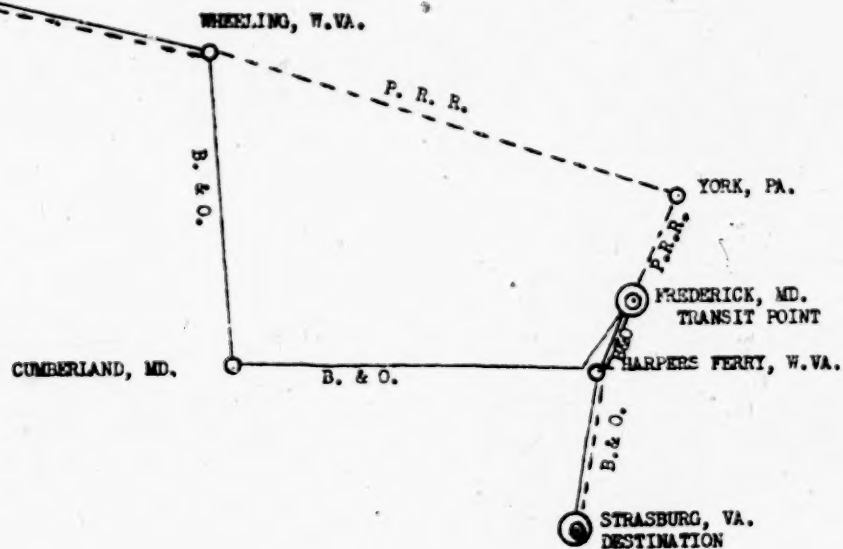
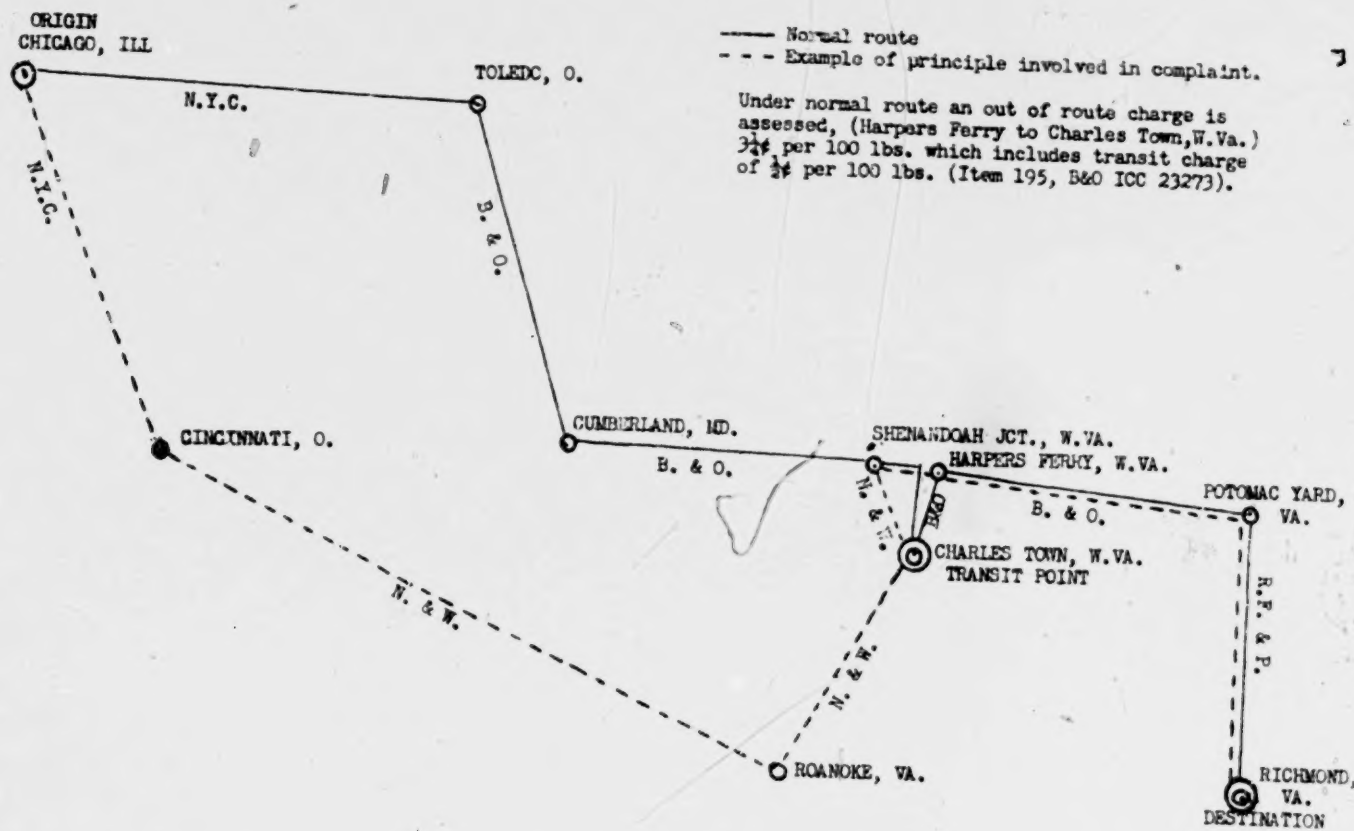


EXHIBIT No. 43



— Normal route
- - - Example of principle involved in complaint.

Under normal route an out of route charge is assessed, (Harpers Ferry to Charles Town, W.Va.) $3\frac{1}{2}$ ¢ per 100 lbs. which includes transit charge of $\frac{1}{2}$ ¢ per 100 lbs. (Item 195, B&O ICC 23273).

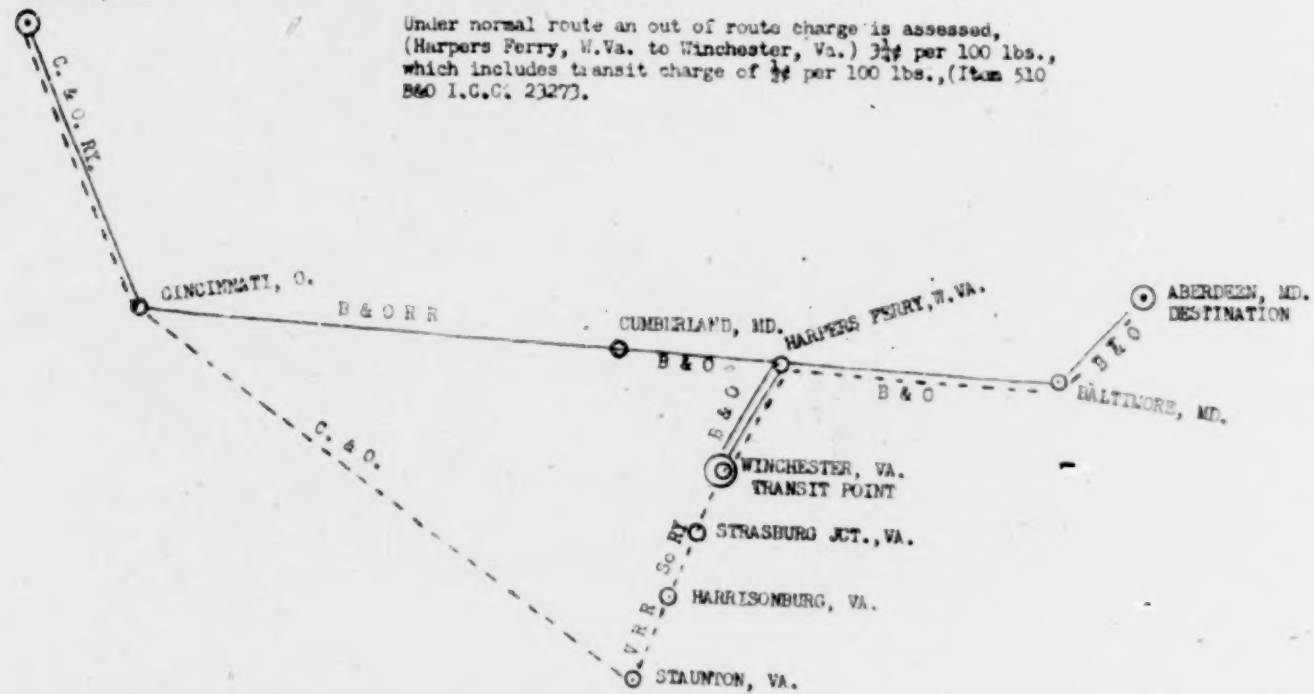
107

EXHIBIT No. 44

ORIGIN
CHICAGO, ILL.

- Normal route
- - - Example of principle involved in complaint.

Under normal route an out of route charge is assessed,
(Harpers Ferry, W.Va. to Winchester, Va.) $3\frac{1}{2}$ ¢ per 100 lbs.,
which includes transit charge of $\frac{1}{2}$ ¢ per 100 lbs., (Item 510
B&O I.C.C. 23273).



[fol. 741]

EXHIBIT No. 45

Historical Statement of Back Haul or Out of Route Charges Applying in Connection with Feed Mixing in Transit at Hagerstown, Md., from Representative Origin Territories to Typical Destinations; also Reproduction of Exhibits Nos. 1 and 2, I. C. C. Docket No. 18598.

			Transit and Back Haul or Out of Route Charge at Hagerstown, Md., when Destined to:					Comment	
			(For P. R. R. Delivery)						
			Freehold, N. J.	Downing- town, Pa.	New York, N. Y.	Aberdeen, Md.	Salisbury, Md.		
			(Published Charge as Shown Below includes Transit Charge of 1/2¢ per 100 Pounds; Balance is Back Haul or Out of Route Charge in Cents per 100 Pounds.)						
Effective Date	Tariff Reference	Origin Territory							
May	5, 1921	Sup. 7, PRR GO-ICC 11227	West of Pittsburgh	5.0	5.0	5.0	5.0	5.0	
			Pittsburgh Local	6.0	6.0	6.0	6.0	6.0	
			Buffalo Local	6.0	6.0	6.0	6.0	6.0	
			East of Pittsburgh	6.0	6.0	6.0	6.0	6.0	
January	3, 1922	PRR GO-ICC 12174	Pittsburgh Local	5.25	5.25	5.25	5.25	5.25	
			Buffalo Local	5.25	5.25	5.25	5.25	5.25	
			East of Pittsburgh	5.25	5.25	5.25	5.25	5.25	
July	1, 1922	Sup. 10, PRR GO-ICC 12174	West of Pittsburgh	4.5	4.5	4.5	4.5	4.5	10% Reduction, I. C. C. Docket No. 13293, 68 I. C. C. 676
			Pittsburgh Local	4.75	4.75	4.75	4.75	4.75	
			Buffalo Local	4.75	4.75	4.75	4.75	4.75	
			East of Pittsburgh	4.75	4.75	4.75	4.75	4.75	
September 22, 1926	Sup. 25, PRR GO-ICC 13958	Buffalo Beyond (Ex Canada)		4.5	4.5	4.5	4.5	4.5	
June	25, 1927	PRR GO-ICC 14621	Pittsburgh Local	4.0	4.0	4.0	4.0	4.0	
			Buffalo Local	4.0	4.0	4.0	4.0	4.0	
			East of Pittsburgh	4.0	4.0	4.0	4.0	4.0	
August	25, 1927	Sup. 2, PRR GO-ICC 14621	Pittsburgh Local	4.5	4.5	4.5	4.5	4.5	
			Buffalo Local	4.5	4.5	4.5	4.5	4.5	
			East of Pittsburgh	4.5	4.5	4.5	4.5	4.5	

Back Haul or Out of Route Charge in Cents per 100 Pounds at Hagerstown, Md., when Destined to:
(For P. R. R. Delivery)

			Freehold, N. J.	Downing- town, Pa.	New York, N. Y.	Aberdeen, Md.	Salisbury, Md.	
(Transit Charge of ½c per 100 Pounds is in Addition to Charges Shown Below.)								
May	1, 1930	Sup. 12, PRR GO-ICC 14558	West of Pittsburgh	4.0	4.0	4.0	4.0	4.0
			Pittsburgh Local	4.0	4.0	4.0	4.0	4.0
			Buffalo Local	4.0	4.0	4.0	4.0	4.0
			Buffalo Beyond (Ex Canada)	4.0	4.0	4.0	4.0	4.0
			East of Pittsburgh	4.0	4.0	4.0	4.0	4.0
March	28, 1938	Sup. 21, PRR I. C. C. 1250	West of Pittsburgh	4.5	4.5	4.5	4.5	4.5
			Pittsburgh Local	4.5	4.5	4.5	4.5	4.5
			Buffalo Local	4.5	4.5	4.5	4.5	4.5
			Buffalo Beyond (Ex Canada)	4.5	4.5	4.5	4.5	4.5
			East of Pittsburgh	4.5	4.5	4.5	4.5	4.5

October 20, 1939 Sup. 12, PRR I. C. C. 2117

Absorption of W. Md. Ry.
Switching Charge of
\$6.93 Per Car both In-
bound and Outbound
Provided—To Expire
with December 31, 1940.

[fol. 742]

Historical Statement of Back Haul or Out of Route Charges Applying in Connection with Feed Mixing in Transit at Hagerstown, Md., from Representative Origin Territories to Typical Destinations; also Reproduction of Exhibits Nos. 1 and 2, I. C. C. Docket No. 18598.

Back Haul or Out of Route Charge in Cents per 100 Pounds at Hagerstown, Md., when Destined to:

(For P. R. R. Delivery)

Freehold, Downing- New York, Aberdeen, Salisbury,
N. J. town, Pa. N. Y. Md. Md.

(Transit Charge of $\frac{1}{2}$ c per 100 Pounds is in Addition to Charges Shown Below)

Effective Date Tariff Reference
November 22, 1940 Sup. 16, PRR I. C. C. 2117

Origin Territory

Comment

Expiration Date of December 31, 1940, in connection with Absorption of W. Md. Ry. Switching (both Inbound and Outbound) Eliminated.

September 10, 1941	PRR I. C. C. 2442	West of Pittsburgh	4.5	4.5	4.5	4.5	4.5
		Pittsburgh Local	4.5	4.5	4.5	4.5	4.5
		Buffalo Local	4.5	4.5	4.5	4.5	4.5
		Buffalo Beyond (Ex Canada)	4.5	4.5	4.5	4.5	4.5
		East of Pittsburgh	4.5	4.5	4.5	4.5	4.5

REPRODUCTION OF :

Exhibit No. 1, I. C. C. Docket No. 18598

D. A. Stickell & Sons, Inc. Exhibit No. 1
I. C. C. Docket No. 18598 Witness Daly
D. A. Stickell & Sons, Inc.
Hagerstown, Maryland

December 8th, 1920

Mr. E. S. Neilson,
General Freight & Passenger Agent, P.R.R.,
Chambersburg, Pa.

Dear Sir:

Referring the writers conversation with you several days ago, we hope that you are doing what you can to secure the milling in transit privilege for us here at Hagerstown. Just at this time nearly all of the local wheat is heavily saturated with Garlic and it is necessary for us to go West to buy some other wheat to blend it. As we advise you we are limited to points from which we can buy wheat on account of not being able to use your road. All that we want is a milling and mixing transit privilege at Hagerstown and not at our mill and we will attend to getting cars from your road and back to your road.

The writer will appreciate your effort to get this thru for us and we believe that after you have granted it to us that you will not regret it as it will certainly give you more business and there are times that all Railroads would like to have more business. We know this has not been the situation in the past but if railroading is like our business your day will probably come.

Thanking you in advance for anything you can do for us, we are
Very respectfully,

D. A. Stickell & Sons,
By Clarence M. Stickell

CMS/BC
GTD-w
CD-847 2-2-27

Exhibit No. 2, I. C. C. Docket No. 18598

D. A. Stickell & Sons, Inc. Exhibit No. 2
I. C. C. Docket No. 18598 Witness Daly
D. A. Stickell & Sons, Inc.
Hagerstown, Maryland

December 11th, 1920

Mr. E. S. Neilson,
Division Freight & Passenger Agent, P.R.R.,
Chambersburg, Pa.
Dear Sir:

Mr. Lowman was in our office this morning and advised us that it is agreeable to your road to allow milling and mixing in transit at Hagerstown on grain and grain products originating West of Harrisburg with final destination at points East of Harrisburg and the transit charge to be 5c when originating point is West of Pittsburgh and 6c when East of Pittsburgh. Also that we are to pay any switching charge that might be incurred at Hagerstown. These conditions are all agreeable to us with the exception that we do not feel the originating line should be limited to points West of Harrisburg. We think that all points on what was formerly known as the C. V. Ry. should be included in the originating points and that we should also be permitted to use these same points as final destination especially when the originating point is West of Harrisburg. In other words we would like to bring wheat from Ohio or Chicago and mill it here and be permitted to make final shipment to any point from Winchester to Harrisburg and all points East of Harrisburg and then any wheat that originates at any point between Winchester and Harrisburg, mill it here and send it to any point East of Harrisburg.

We trust that it will be agreeable to you to give us such privileges. We understand that the tariff in effect now at Chambersburg gives all these privileges so that a supplement to that tariff naming Hagerstown allowing the same privileges would be all that is necessary.

Thanking you for the attention you have given this and trusting that you will be able to have the above put in effect at an early date, we are

Very respectfully,
D. A. Stickell & Sons
By Clarence M. Stickell

CMS/BC
GTD-w
2-2-27

[fol. 743]

EXHIBIT No. 46

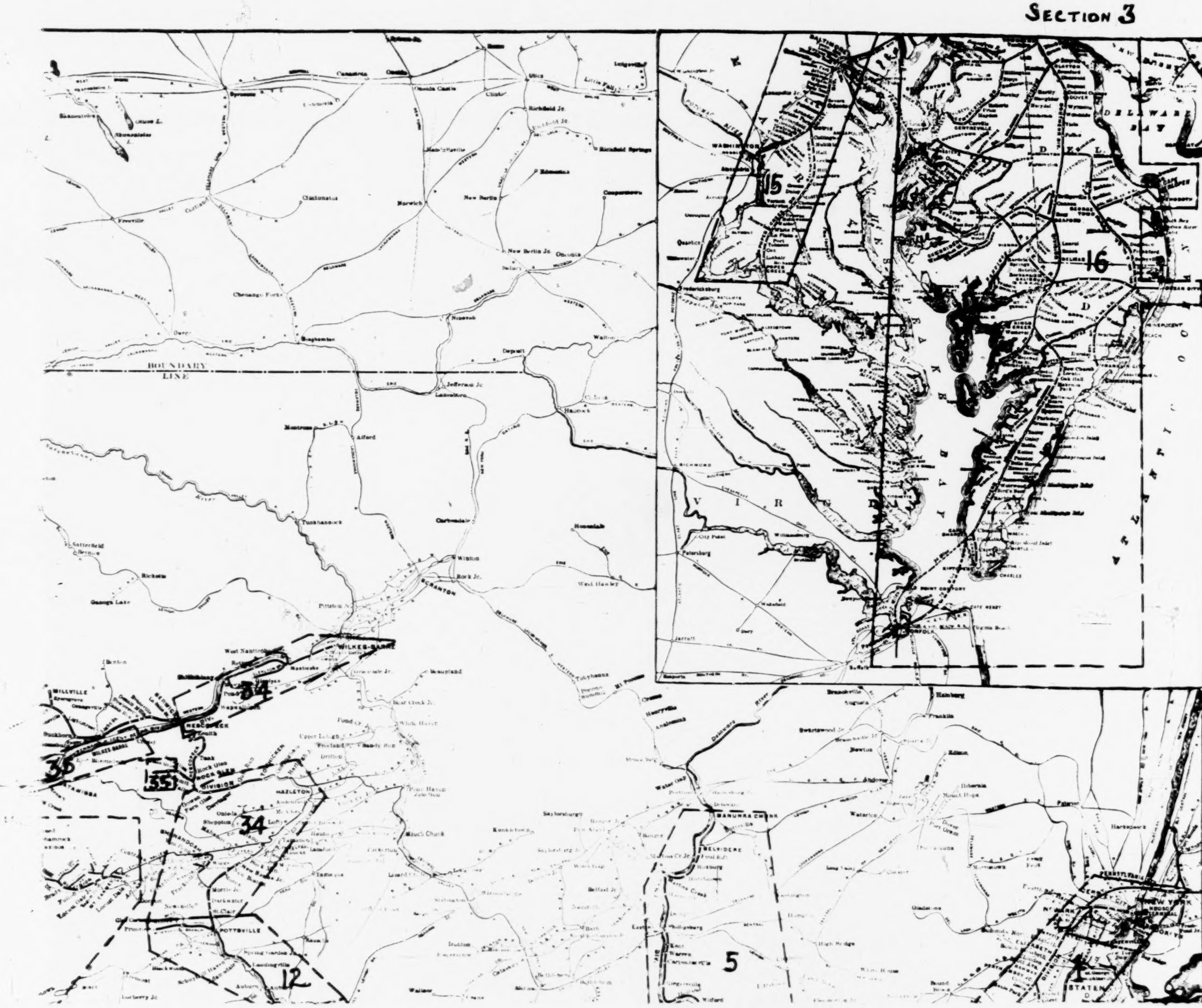
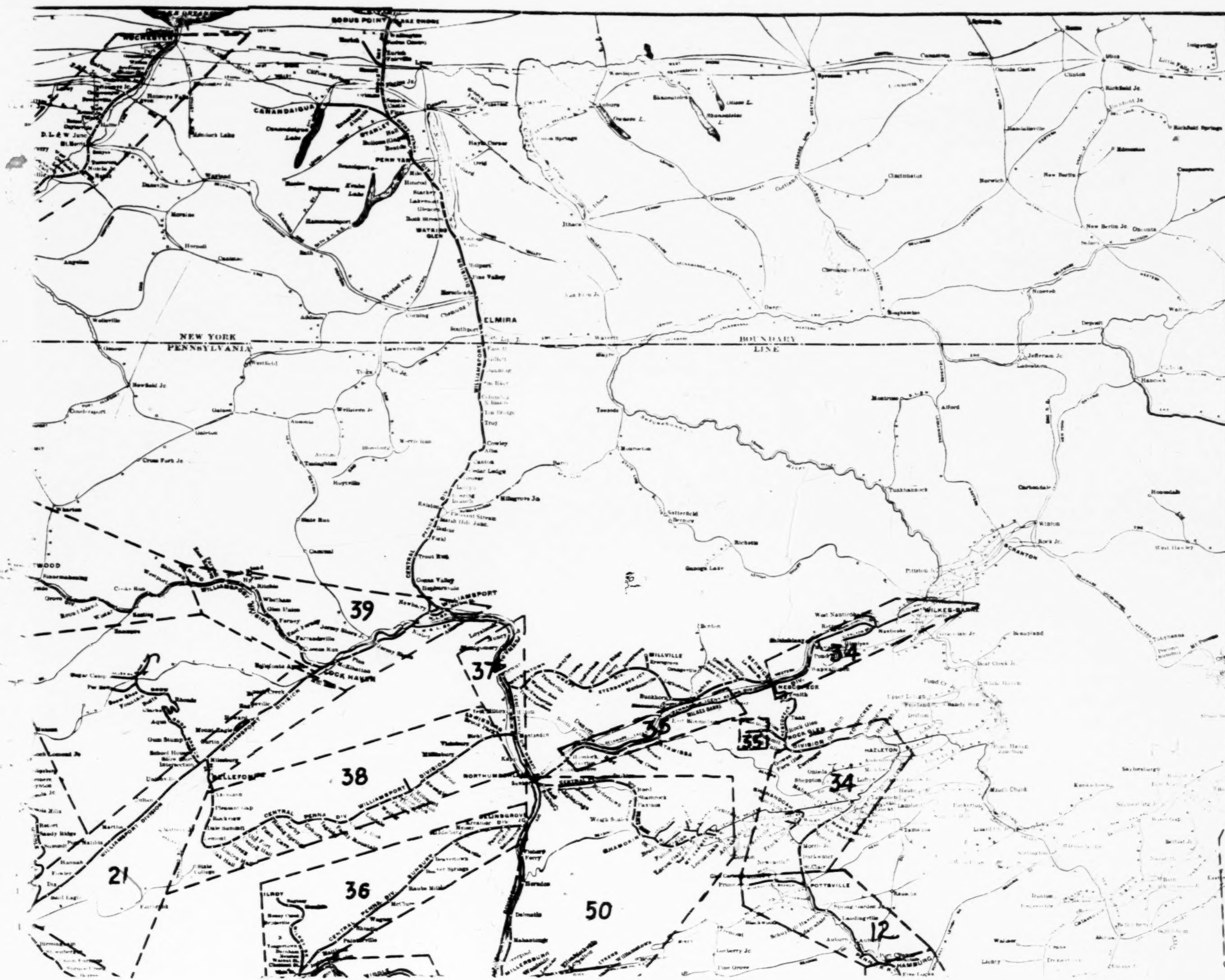
Statement showing Origin and Destination Territory on and via The Pennsylvania Railroad Company (Territory East of Pittsburgh, Pa., and Erie, Pa.) in connection with Transit Arrangements en Feed in accordance with P.R.R. Tariff I.C.C. No. 2442 and Out-of-Route or Back Haul Charges where applicable at Hagerstown, Md., consisting of:

- | | | | |
|---------------|---------------------|---|--|
| SECTION NO. 1 | (Page No. 1) | — | Grouping of Origin Territory |
| SECTION NO. 2 | (Page No. 2) | — | Grouping of Destination Territory |
| SECTION NO. 3 | (Page No. 3) | — | Map outlining Origin and Destination Groups by Group Number Designation shown in Sections Nos. 1 and 2. |
| SECTION NO. 4 | (Pages Nos. 4 to 6) | — | Statement of Territories from and to which Transit is available, together with Out-of-Route or Back Haul Charges where applicable at Hagerstown, Md. |

CD-824

SECTION NO. 2
Grouping of Destination Territory

GROUP NO. 1			GROUP NO. 4			GROUP NO. 8			GROUP NO. 13			GROUP NO. 34		
52	New York Lighter-	N. Y.	611	Englishtown,	N. J.	417	Laverock,	Pa.	1321	New Garden,	Pa.	5065	Nescopeck,	Pa.
to	age,		to			to			to			to		
244	New Brunswick	N. J.	637	Sea Girt,	N. J.	421	Sunnybrook,	Pa.	1329	Newark Center,	Del.	5138	Wilkes-Barre,	Pa.
BEDT # 5			804	Lumberton,	N. J.	1113	Narberth,	Pa.	7030	Darby,	Pa.	5174	Gowen,	Pa.
	Brooklyn and Long	N. Y.	to			to			to			to		
	Island City, Stas.,		813	Medford,	N. J.	1147	Frazer,	Pa.	7114	Stanton,	Del.	5292	St. Clair,	Pa.
Bush	Terminal R. R.		840	Smithville,	N. J.	1149	Morstein,	Pa.	7138	Newark,	Del.			
5	28th St. (Bay	N. Y.	to			to			7430	Garrett Road,	Pa.			
to	Ridge) Brooklyn,		858	Pemberton,	N. J.	1153	Green Hill,	Pa.	to					
25	63rd St. (Bay	N. Y.	Penna. & Atlantic R. R.			1165	Knickerbocker,	Pa.	7513	Oakbourne,	Pa.			
	Ridge) Brooklyn,		687	Columbus,	N. J.	to			7519	Wawa,	Pa.			
New York	Dock Ry.		to			1205	Langhorne,	Pa.	to					
5	Atlantic Terminal,	N. Y.	698	Juliestown,	N. J.	1621	Miquon,	Pa.	7544	Avondale,	Pa.			
to	Brooklyn,		863	South Pemberton,	N. J.	to			7600	Farnhurst,	Del.			
15	Fulton Terminal,	N. Y.	to			1657	Devault,	Pa.	to					
	Brooklyn,		877	Whitings,	N. J.	7516	West Chester,	Pa.	7611	Porter,	Del.			
GROUP NO. 2			GROUP NO. 5			GROUP NO. 9			GROUP NO. 14			GROUP NO. 47		
249	Voorhees,	N. J.	455	Wilburtha,	N. J.	1162	Glen Loch,	Pa.	7140	Iron Hill,	Md.	8115	Melvale,	Md.
to			to			1220	Whitford,	Pa.	to			to		
309	Edgely,	Pa.	565	Manunka Chunk,	N. J.	to			7237	Stemmer's Run,	Md.	8278	Glen Rock,	Pa.
441	Trenton,	N. J.				1318	Baker,	Pa.	7548	West Grove,	Pa.			
599	Dayton,	N. J.	GROUP NO. 6			1332	Parkersburg,	Pa.	to			GROUP NO. 48		
1209	Fallsington,	Pa.	716	Burlington,	N. J.	to			7589	Colora,	Md.	8342	Hanover,	Pa.
GROUP NO. 3			758	Camden,	N. J.	1481	Highspire,	Pa.				to		
312	Bristo,	Pa.	GROUP NO. 7			GROUP NO. 10			GROUP NO. 15			8409	Frederick,	Md.
to			(Philadelphia, Pa., Stations)			1483	Steelton,	Pa.	7239	Bay View, Baltimore,	Md.			
319	Cornwells Heights,	Pa.	425	St. Martins,	Pa.	to			to			GROUP NO. 49		
569	South Amboy,	N. J.	to			1496	Rockville,	Pa.	7398	Potomac Yard,	Va.	8281	Larue,	Pa.
to			432	Engleside,	Pa.	8480	New Cumberland,	Pa.	8004	Baltimore (Bolton),	Md.	to		
595	Jamesburg,	N. J.	1033	Vine St. & Pier 13,	Pa.	to			to			8330	Menges Mills,	Pa.
640	Prospect Plains,	N. J.	1109	Overbrook,	Pa.	8494	West Fairview,	Pa.	8110	Woodberry, Baltimore,	Md.	8422	Stony Brook,	Pa.
to			1603	Wynnefield Avenue,	Pa.				Rosslyn Connecting R. R.			to		
681	Kinkora,	N. J.	to			GROUP NO. 11			7387	Relee,	Va.	8467	Goldsboro,	Pa.
706	Roebbling,	N. J.	1617	Cinnaminson,	Pa.	1667	Spring City,	Pa.	to			GROUP NO. 50		
to			7001	Broad & Washington	Pa.	to			7398	Rosslyn,	Va.	8504	Dauphin,	Pa.
711	Stevens	N. J.	to			1724	Hamburg,	Pa.				to		
778	Merchantville,	N. J.	7028	Paschall,	Pa.	GROUP NO. 12			GROUP NO. 16			8695	End Montelius Branch,	Pa.
to			7404	31st & Chestnut	Pa.	1726	Auburn,	Pa.	7124	Cooch,	Del.			
803	Medford Junction,	N. J.	to			to			to			GROUP NO. 53		
817	Mount Holly,	N. J.	7426	End Cardington	Pa.	1745	Lytle,	Pa.	7136	Delaware City,	Del.	1503	Shiremanstown,	Pa.
			Branch,						7613	Kirkwood,	Del.	to		
									to			1518	Scotland,	Pa.
									7982	Naval Operating	Va.	GROUP NO. 54		
									Base (Hampton			1521	Fayetteville,	Pa.
									Roads),			to		
												1565	Winchester,	Va.



SECTION NO. 4

nt of Territories from and to which Transit is Available, together with Out-of-Route or Back Haul Charges where Applicable at Hagerstown, Md.
(Charges in cents per 100 pounds)

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[fol. 748]

SECTION NO. 4 (Continued)

Statement of Territories from and to which Transit is Available, together with Out-of-Route or Back Haul Charges where Applicable at Hagerstown, Md.
(Charges in cents per 100 pounds)

FROM:

Origin Territory Described Below and Points in Groups Nos.	TO: Destinations in Groups Nos.																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	34	35	47	48
Group No. 37.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 38.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 39.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 40.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 41.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 42.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 43.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 44.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 45.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 46.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 47.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 48.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	7½	N	9
Group No. 49.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	7½	9	N
Group No. 53.....	3¼	3¼	3¼	3¼	3¼	3¼	3¼	3¼	3¼	3¼	3¼	3¼	3¼	3¼	3¼	3¼	3¼	(13)	3¼	3¼
Group No. 54.....	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(19)	(6)	(6)

Explanation of Reference Marks

N—No transit arrangement is in effect.

(6)—Out-of-route or back haul charge ½¢ per 100 pounds when originating at stations 1521 Fayetteville, Pa., to 1546 Maugansville, Md. No out-of-route or back haul charge when originating Md., to 1565 Winchester, Va.

(7)—Out-of-route or back haul charge ½¢ per 100 pounds when destined to stations 1521 Fayetteville, Pa., to 1546 Maugansville, Md., inclusive. No out-of-route or back haul charge to balar

(8)—Out-of-route or back haul charge 4½¢ per 100 pounds when destined to stations 1521 Fayetteville, Pa., to 1541 Richmond, Pa., and 2¼¢ per 100 pounds when destined to stations 1542 gansville, Md. No out-of-route or back haul charge when destined to stations 1547 Hagerstown, Md., to 1565 Winchester, Va., inclusive.

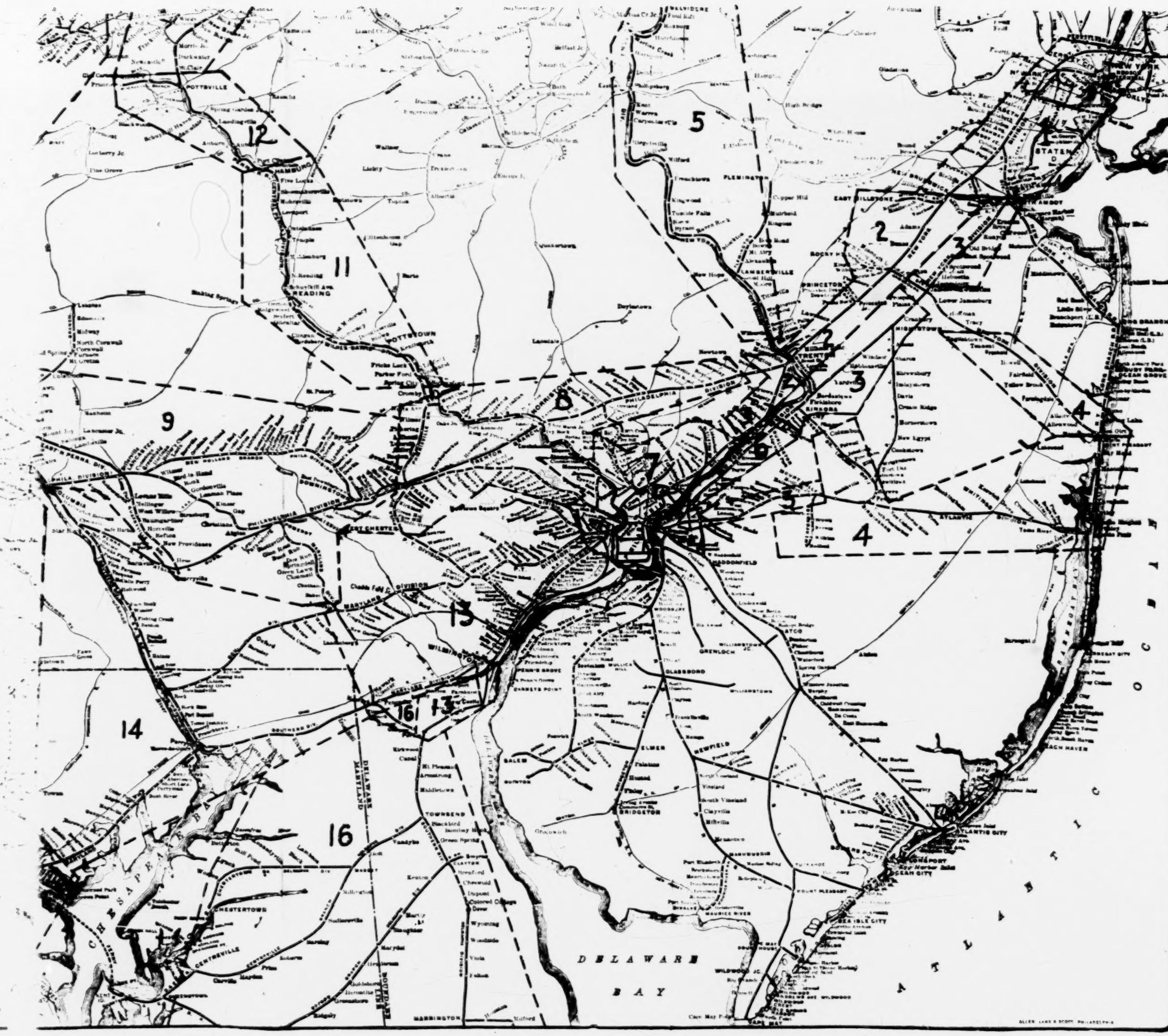
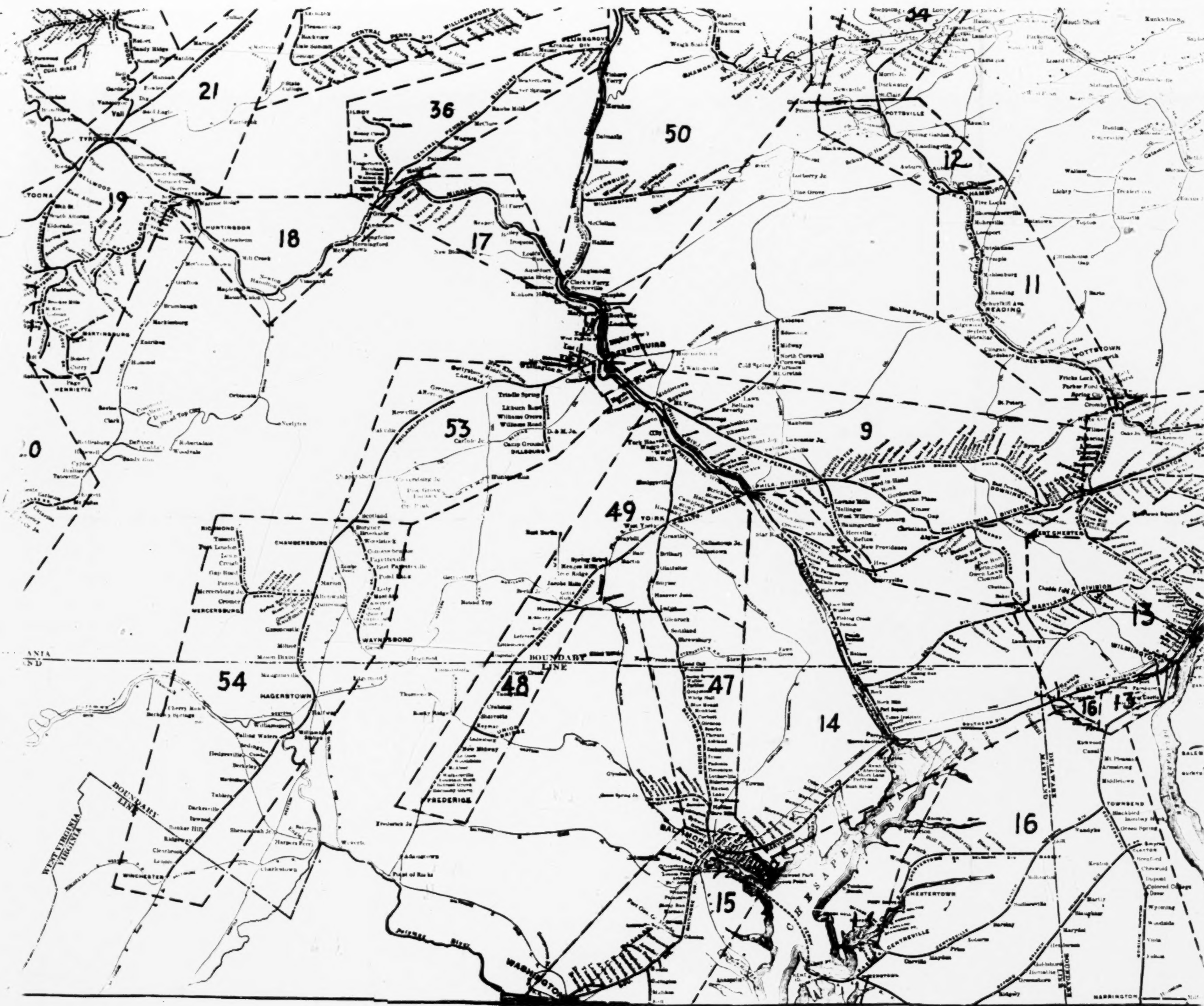
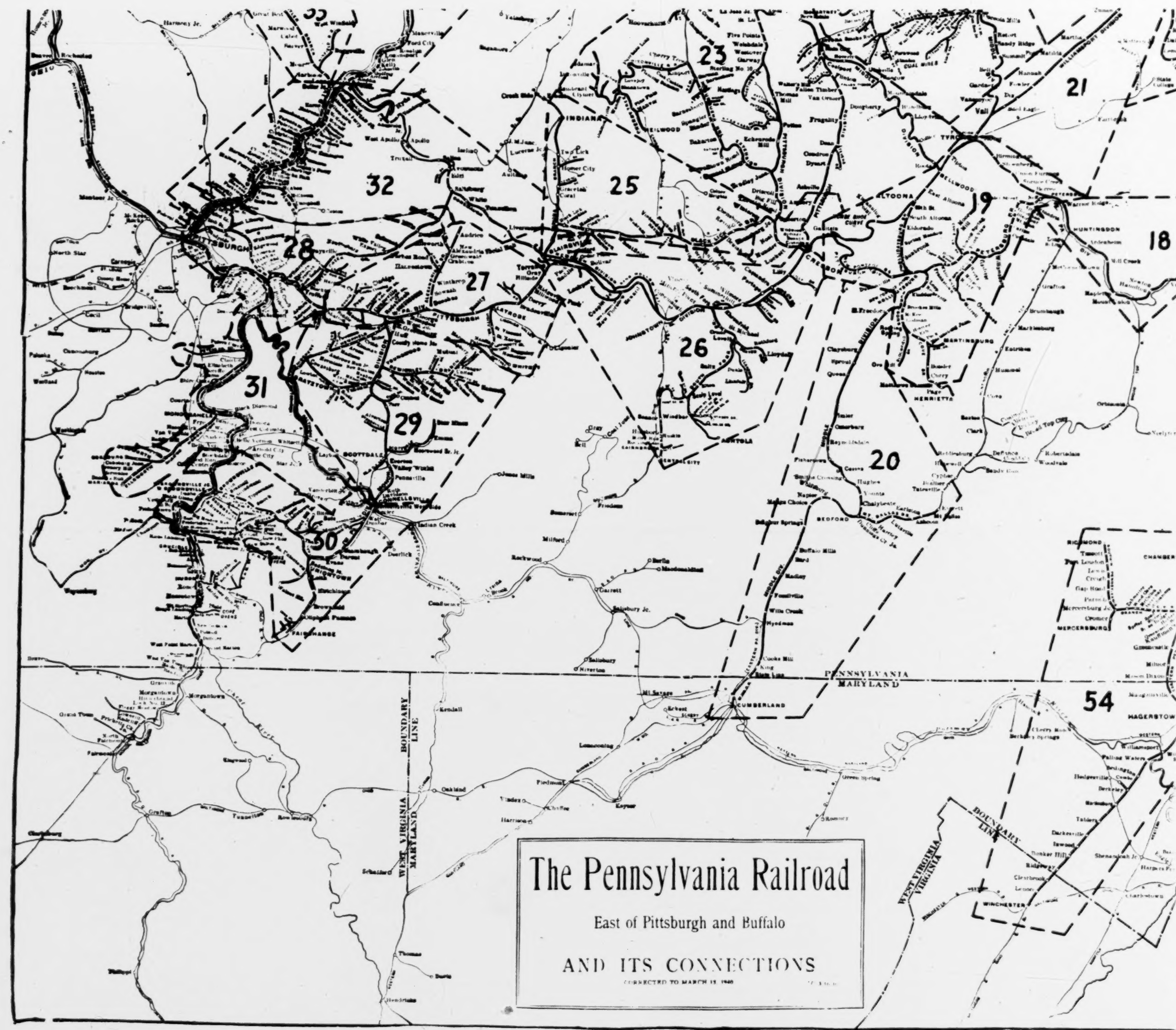
(9)—No out-of-route or back haul charge when originating at stations 1521 Fayetteville, Pa., to 1546 Maugansville, Md., and destined to stations 1547 Hagerstown, Md., to 1565 Winchester stations 1547 to 1565 and destined to stations 1521 to 1546.

f Territories from and to which Transit is Available, together with Out-of-Route or Back Haul Charges where Applicable at Hagerstown, Md.
(Charges in cents per 100 pounds)

[illegible]

100 pounds when originating at stations 1521 Fayetteville, Pa., to 1546 Maugansville, Md. No out-of-route or back haul charge when originating at stations 1547 Hagerstown, or 100 pounds when destined to stations 1521 Fayetteville, Pa., to 1546 Maugansville, Md., inclusive. No out-of-route or back haul charge to balance of stations in Group No. 54. or 100 pounds when destined to stations 1521 Fayetteville, Pa., to 1541 Richmond, Pa., and 23¢ per 100 pounds when destined to stations 1542 Kauffman, Pa., to 1546 Maugansville, Md., or back haul charge when destined to stations 1547 Hagerstown, Md., to 1565 Winchester, Va., inclusive.

2 originating at stations 1521 Fayetteville, Pa., to 1546 Maugansville, Md., and destined to stations 1547 Hagerstown, Md., to 1565 Winchester, Va., or when originating at stations 1521 to 1546.



SECTION 4 (Continued)

Statement of Territories from and to which Transit is Available, together with Out-of-Route or Back Haul Charges where Applicable at Hagerstown, Md.

Explanation of Reference Marks (Continued)

- (10)—Out-of-route or back haul charge 9¢ per 100 pounds when destined to stations 8504 Dauphin, Pa., to 8570 Mahantango, Pa., inclusive. No transit arrangement in effect to balance of stations in Group 50.
- (11)—Out-of-route or back haul charge when destined to station 1488 Harrisburg, Pa., as representative of Group 10.
- (12)—Out-of-route or back haul charge of 9¢ per 100 pounds when destined to stations 1129 St. Davids, Pa., to 1147 Frazer, Pa., inclusive, and stations 1637 Betzwood to 1657 Devault, Pa., inclusive. No transit arrangement in effect to balance of stations in Group 8.
- (13)—Out-of-route or back haul charge 7½¢ per 100 pounds when destined to stations 1503 Shiremanstown, Pa., to 1512 Carlisle, Pa., and 6¢ per 100 pounds when destined to stations 1513 Greason, Pa., to 1518 Scotland, Pa.
- (14)—From station 2333 Milesburg, Pa., to station 8532 Millersburg, Pa., as representative.
- (15)—Applicable only from stations 5377 Reedsville, Pa., to 5392 Lewistown, Pa., inclusive. No transit arrangement in effect from balance of stations in Group 36.
- (16)—Out-of-route or back haul charge applicable from station 5392 Lewistown, Pa., as representative of Group 36.
- (17)—Out-of-route or back haul charge applicable from station 1517 Shippensburg, Pa., to station 1503 Shiremanstown, Pa., as representative.
- (18)—Out-of-route or back haul charge 2¾¢ per 100 pounds when destined to stations 1521 Fayetteville, Pa., to 1546 Maugansville, Md. No out-of-route or back haul charge when destined to balance of stations in Group 54.
- (19)—Out-of-route or back haul charge 4½¢ per 100 pounds when originating at stations 1521 Fayetteville, Pa., to 1541 Richmond, Pa., 2¾¢ per 100 pounds when originating at stations 1542 Kauffman, Pa., to 1546 Maugansville, Md. No out-of-route or back haul charge when originating at stations 1547 Hagerstown, Md., to 1565 Winchester, Va.

SECTION 4 (Continued)

Statement of Territories from and to which Transit is Available, together with Out-of-Route or Back Haul Charges where Applicable at Hagerstown, Md.

Explanation of Reference Marks (Continued)

- (10)—Out-of-route or back haul charge 9¢ per 100 pounds when destined to stations 8504 Dauphin, Pa., to 8570 Mahantango, Pa., inclusive. No transit arrangement in effect to balance of stations in Group 50.
- (11)—Out-of-route or back haul charge when destined to station 1488 Harrisburg, Pa., as representative of Group 10.
- (12)—Out-of-route or back haul charge of 9¢ per 100 pounds when destined to stations 1129 St. Davids, Pa., to 1147 Frazer, Pa., inclusive, and stations 1637 Betzwood to 1657 Devault, Pa., inclusive. No transit arrangement in effect to balance of stations in Group 8.
- (13)—Out-of-route or back haul charge 7½¢ per 100 pounds when destined to stations 1503 Shiremanstown, Pa., to 1512 Carlisle, Pa., and 6¢ per 100 pounds when destined to stations 1513 Greason, Pa., to 1518 Scotland, Pa.
- (14)—From station 2333 Milesburg, Pa., to station 8532 Millersburg, Pa., as representative.
- (15)—Applicable only from stations 5377 Reedsville, Pa., to 5392 Lewistown, Pa., inclusive. No transit arrangement in effect from balance of stations in Group 36.
- (16)—Out-of-route or back haul charge applicable from station 5392 Lewistown, Pa., as representative of Group 36.
- (17)—Out-of-route or back haul charge applicable from station 1517 Shippensburg, Pa., to station 1503 Shiremanstown, Pa., as representative.
- (18)—Out-of-route or back haul charge 2¾¢ per 100 pounds when destined to stations 1521 Fayetteville, Pa., to 1546 Maugansville, Md. No out-of-route or back haul charge when destined to balance of stations in Group 54.
- (19)—Out-of-route or back haul charge 4½¢ per 100 pounds when originating at stations 1521 Fayetteville, Pa., to 1541 Richmond, Pa., 2¾¢ per 100 pounds when originating at stations 1542 Kauffman, Pa., to 1546 Maugansville, Md. No out-of-route or back haul charge when originating at stations 1547 Hagerstown, Md., to 1565 Winchester, Va.